

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



**Fiscal Year 2023**

**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,<sup>1</sup> presents estimates from agency-reported analyses issued in Fiscal Year 2023 (FY23).<sup>2</sup> 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.

This Report covers fiscal year 2023, and includes 82 rules promulgated by Executive Branch and independent agencies. Many of these rules implemented Federal budgetary programs as required or authorized by Congress; examples include rules concerning the Medicare Program or the Federal Pell Grant Program. More information about the 58 FY23 Executive Branch rules follows:

- For 19 rules, we report agency estimates of both benefits and costs, totaling \$30.7 billion to \$49.0 billion in annual benefits and \$9.6 billion to \$11.9 billion in annual costs (in 2001\$).<sup>3</sup>
- For 1 rule, we report agency estimates of benefits, but costs are not monetized.
- For 10 rules, we report agency estimates of costs, but benefits are not monetized.
- For 30 rules, we report agency estimates of transfers (either Federal budget transfers or non-budget transfers).

It is important to emphasize, as OMB traditionally does in these types of reports, that the estimates used here have limitations. Incomplete empirical information and data are continuing challenges to agencies when assessing the likely effects of regulation. In some cases, the quantification of various effects may be imprecise, uncertain, or incomplete. In addition, the value of particular categories of benefits (such as foreign affairs impacts or protection of 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 2023. Chapter II discusses regulatory impacts on State, local, and Tribal governments; small businesses; wages; and economic growth. Chapter III provides recommendations for reform.

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

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

<sup>3</sup> In 2022 dollars, the total across FY23 is equivalent to \$49 to \$78 billion in annual benefits and \$15 to \$19 billion in annual costs.

This Report is being issued along with OMB's required Report to Congress on Agency Compliance with the Unfunded Mandates Reform Act of 1995 (UMRA).<sup>4</sup> 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 (or explain why it does not do so) before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (approximately \$200 million with the inflation adjustment) 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 through an electronic spreadsheet to facilitate the public's use and analysis of its contents.<sup>5</sup>

As another example, in a recent 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*<sup>6</sup> and the number of peer reviews conducted pursuant to OMB's *Final Information Quality Bulletin for Peer Review*.<sup>7</sup> As an alternative, we proposed to disseminate those fiscal year summaries on OMB's website.<sup>8</sup> We did not receive significant feedback from the public noting concerns with this proposed new approach. Thus, in order to achieve more effective and efficient display of the Information Quality Act reporting results,<sup>9</sup> this information

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<sup>4</sup> 2 U.S.C. § 1538.

<sup>5</sup> As discussed in more detail below, the spreadsheet may facilitate calculation of impact subtotals that potentially hold interest for various readers.

<sup>6</sup> Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002), [www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/fedreg/reproducible2.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/fedreg/reproducible2.pdf).

<sup>7</sup> 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 [www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2005/m05-03.pdf](http://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-03.pdf).

<sup>8</sup> 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 [www.gao.gov/products/GAO-16-110](http://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.

<sup>9</sup> Treasury and General Government Appropriations Act, 2001, Pub. L. No. 106-554, § 515(a) (2000) (as codified at 44 U.S.C. § 3516, note).

is now publicly available via [OIRA's Information Quality home page](#) in a format that allows understanding of agency-to-agency 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 information on requests for correction and agency peer reviews and, to be more publicly accessible, instead will regularly update the online information.

Upon publication of the preceding draft Report, OMB requested public comment in 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 OMB's website.

**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.<sup>10</sup>

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);<sup>11</sup>
- Designated as meeting the analysis threshold under the Unfunded Mandates Reform Act of 1995 (UMRA);<sup>12</sup> or
- Designated as “significant” under § 3(f)(1) of Executive Order 12866.<sup>13</sup>

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<sup>10</sup> 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* [www.govinfo.gov/content/pkg/PLAW-106publ554/html/PLAW-106publ554.htm](http://www.govinfo.gov/content/pkg/PLAW-106publ554/html/PLAW-106publ554.htm).

<sup>11</sup> These criteria are defined in Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, as applying to a rule that has resulted in or is likely to result in “(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C. § 804(2). Under the statute, agencies submit a report to each House of Congress and GAO and make available “a complete copy of the cost-benefit analysis of the rule, if any.” *Id.* § 801(a)(1)(B)(i); *see also* Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-24-09, *Guidance on Compliance with the Congressional Review Act* (Feb. 16, 2024), *available at* [www.whitehouse.gov/wp-content/uploads/2024/02/M-24-09-Guidance-on-Compliance-with-the-Congressional-Review-Act.pdf](http://www.whitehouse.gov/wp-content/uploads/2024/02/M-24-09-Guidance-on-Compliance-with-the-Congressional-Review-Act.pdf).

<sup>12</sup> 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 one year.” 2 U.S.C. § 1532(a).

<sup>13</sup> A regulatory action is considered “significant” under § 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, if it is likely to result in a rule that may have “an annual effect on the economy of \$200

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 analyses conducted by the various agencies but rather to facilitate comparisons across analyses.<sup>14</sup> 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 supplemented by Executive Order 13563 and amended by Executive Order 14094.<sup>15</sup> This discussion is based solely on data provided by these agencies to the Government Accountability Office (GAO) and OMB under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, commonly known as the Congressional Review Act.<sup>16</sup>

As in previous Reports, we have adjusted estimates to 2001 dollars (2001\$), per 2003 OMB Circular No. A-4.<sup>17</sup> We also report estimates that reflect a recent annual gross domestic product (GDP) deflator.<sup>18</sup>

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

- Individual regulatory impact analyses vary in rigor and may rely on different assumptions, including baseline scenarios, time horizons, methods (including

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million or more (adjusted every 3 years by 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.” Executive Order No. 14094, *Modernizing Regulatory Review*, 88 Fed. Reg. 21,879 (Apr. 11, 2023), available at [www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review](http://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review)

<sup>14</sup> 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.

<sup>15</sup> These executive orders can be found at [www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf](http://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf), [www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf](http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf), and [www.govinfo.gov/content/pkg/FR-2023-04-11/pdf/2023-07760.pdf](http://www.govinfo.gov/content/pkg/FR-2023-04-11/pdf/2023-07760.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.

<sup>16</sup> 5 U.S.C. §§ 801–808.

<sup>17</sup> Unless otherwise noted, references to Circular No. A-4 in this Report refer to the September 17, 2003, publication of the document. This version of Circular No. A-4 applied to the regulatory analyses of the final rules listed herein. On November 9, 2023, OMB published a revised Circular No. A-4 that will inform future versions of this Report.

<sup>18</sup> 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, [apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13](https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13) (last visited July 26, 2024). 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.



models), data, and measures of welfare changes (including approximations thereof). Summing across estimates involves the aggregation of analytical results that may not be comparable.<sup>19</sup>

- 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, in order 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:

1. 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.
2. 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, if, for instance, rules encroach upon privacy or human dignity, there may be important non-monetized costs of regulation. Even outcomes like the effects of hazards on human health and the environment, which can in principle be measured, can be difficult in practice to quantify or monetize. These effects on health and environment should be

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<sup>19</sup> Please see past Reports for further discussion about lack of comparability.

modeled qualitatively if measurement is too difficult to include in the benefit and cost estimates directly.

3. 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.<sup>20</sup> Executive Orders 12866, 13563, and 14094 establish the importance of such analysis, with the goal of improving relevant regulations through modification, streamlining, expansion, or repeal.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.
4. 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 FY23**

### ***1. Rules Issued by Executive Departments and Agencies***

In this section, in 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

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<sup>20</sup> See Greenstone (2009).

<sup>21</sup> See Executive Order 12866 § 5, 58 Fed. Reg. 51,735, 51,739–40 (Oct. 4, 1993); Executive Order 13563 § 6, 76 Fed. Reg. 3821, 3822 (Jan. 21, 2011), and Executive Order 14094 § 3, 88 Fed. Reg. 21,879, 21,880–81 (Apr. 11, 2023).

<sup>22</sup> Retrospective review has shown that both costs and benefits can be overestimated or underestimated. See Harrington et al. (2000); Harrington (2006).

<sup>23</sup> See Benneer and Wiener (2021).

period beginning October 1, 2022, and ending September 30, 2023.<sup>24</sup> These rules represented approximately 40 percent of the final rules reviewed by OMB in this fiscal year.<sup>25</sup>

During this time, 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 spreadsheet accompanying this Report, aggregated by agency in Table 1-5 and listed individually in Table 1-6(a). There were 19 such rules in FY 2023, and the issuing agencies estimate a total of \$30.7 billion to \$49.0 billion in annual benefits and \$9.6 billion to \$11.9 billion in annual costs (in 2001\$).<sup>26</sup> We emphasize an important detail—that the totals listed in this paragraph include only the monetized benefits and costs for the minority of rules for which both those categories of impacts were estimated.<sup>27</sup>

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 monetized both costs and benefits, Tables 1-6(b) lists the rules for which agencies monetized only costs, 1-6(c) list the rules for which agencies monetized only benefits, and Table 1-6(d) lists rules for which the agencies estimated neither costs nor benefits.<sup>28</sup> Table 1-7(a) in each spreadsheet lists Federal budget transfers. Table 1-7(b) lists the

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<sup>24</sup> Table numbers have been assigned so as to maintain consistency with analogous tables in recent past Reports. Although these tables, along with the Report more generally, note some instances in which rules are not in effect due to being vacated or enjoined by Federal courts or due to subsequent agency rulemaking, such notes are not necessarily comprehensive. Aggregating impact estimates for rules that are in effect at a particular point in time, rather than for all rules regardless of legal status, is the type of option that we hope may be facilitated by the spreadsheet presentation of much of the Report’s content.

<sup>25</sup> 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](http://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 Section 3(f)(1) 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.

<sup>26</sup> The total across FY23 is equivalent to \$49 to \$78 billion in annual benefits and \$15 to \$19 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 [www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/assets/OMB/circulars/a004/a-4\\_FAQ.pdf](http://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf).

<sup>27</sup> The spreadsheet that contains much of this Report’s content may facilitate the calculation of other aggregates that are of interest to readers.

<sup>28</sup> 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.

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.<sup>29</sup>

## 2. *Rules Issued by Independent Agencies*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>30</sup> 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.<sup>31</sup> 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, 2022, to September 30, 2023.<sup>32</sup> (Rules by independent agencies are not subject to OMB review under Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094.) The Table 1-10 tab in the spreadsheet 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, independent agencies still often face challenges in monetizing the benefits and costs of regulation. For example, the costs associated with disclosure-related provisions have been largely monetized because of the requirements of the Paperwork Reduction Act, whereas the costs associated with provisions that change how the markets are regulated are not generally monetized. The limited information provided by GAO does not indicate whether the rigor of the analyses conducted by these agencies is similar to that of the analyses performed by agencies subject to OMB review.

Existing Executive Orders generally do not require independent agencies to submit their regulations for OMB review, or to engage in analysis of costs and benefits.<sup>33</sup> We emphasize,

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<sup>29</sup> 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 in the form of direct compliance costs or to the extent that the rules cause people to change behavior, thus generating “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. Where such costs or benefits have been estimated by agencies, estimates appear in the accompanying spreadsheet. Accounting options that feature only two categories of effects (benefits and costs), rather than three (benefits, costs and transfers), are discussed in the 2023 update of Circular No. A-4 and thus will receive more attention in future editions of this Report, covering fiscal years when some or all reported regulatory analyses will have been conducted after the effective date of the updated Circular.

<sup>30</sup> 5 U.S.C. §§ 801–808. These provisions are commonly referred to as the Congressional Review Act.

<sup>31</sup> 5 U.S.C. § 801(a)(2)(A). A rule is subject to the GAO reporting requirement if it is likely to result in (a) 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).

<sup>32</sup> Gov't Accountability Off., Congressional Review Act (last visited Jan. 31, 2024), available at [www.gao.gov/legal/other-legal-work/congressional-review-act](http://www.gao.gov/legal/other-legal-work/congressional-review-act).

<sup>33</sup> For information about key processes that exist beyond what is set forth in regulatory Executive Orders, please see Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-24-09, *Guidance on Compliance with the Congressional Review Act* (Feb. 16, 2024), available at [www.whitehouse.gov/wp-content/uploads/2024/02/M-24-09-Guidance-on-Compliance-with-the-Congressional-Review-Act.pdf](http://www.whitehouse.gov/wp-content/uploads/2024/02/M-24-09-Guidance-on-Compliance-with-the-Congressional-Review-Act.pdf).

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.

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

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

### A. Impacts on State, Local, and Tribal Governments

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or “the Act”) describes specific analyses and consultations that agencies must undertake for rules that may result in expenditures of over \$100 million (adjusted annually for inflation) in any year by State, local, and Tribal governments in the aggregate, or by the private sector. As in previous Reports, this chapter uses a ten-year lookback for purposes of administrability. Over the past ten fiscal years, the following rules have imposed costs of more than \$100 million per year in 1995 dollars (1995\$) on State, local, and Tribal governments and have been classified as public sector mandates under the Act<sup>34</sup>:

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

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<sup>34</sup> 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.<sup>35</sup>

- *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 in any year (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.<sup>36</sup> Here, we

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<sup>35</sup> 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. Another update to the rule has been issued even more recently.

<sup>36</sup> See, for example, the 2017 Report, available at [www.whitehouse.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV\\_DOC-2017Cost\\_BenefitReport11\\_18\\_2019.docx.pdf](http://www.whitehouse.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV_DOC-2017Cost_BenefitReport11_18_2019.docx.pdf) or [perma.cc/P8GT-BT5F](https://perma.cc/P8GT-BT5F).

focus on several additional contributions to this literature.<sup>37</sup>

If producers can fully pass through costs of regulations to consumers through 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 CO<sub>2</sub> regulation (implying that consumers bear the remaining 89 percent). Another study in the environmental regulation context, Curtis (2018), examines the effect of the NO<sub>x</sub> Budget Trading Program—a cap-and-trade program created to reduce NO<sub>x</sub> from power plants and high-emissions manufacturing firms. The paper 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) note the dependence of incidence on supply and demand elasticities and 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.

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<sup>37</sup> 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 long-run results are broadly 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 short-term 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. Small Business Administration lending makes resources available to small entities, and Orzechowski (2024) estimates a positive relationship between growth rates in SBA per-capita lending and states’ civilian employment levels, with this relationship appearing to be stronger in states with below-average incomes than in states with higher incomes. Similarly, Balla et al. (2017) find increased small-business lending and stronger private-sector employment growth associate with the Small Business Lending Fund. 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.”<sup>38</sup> In its previous Report, OMB’s recommendations focused on efforts to modernize regulatory review. These initiatives included implementation of Executive Order 14094 (Modernizing Regulatory Review), 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 focused on the prioritization of analytical resources, promoting public participation, and improving regulatory analysis.

This Report’s recommendations synthesize, further implement, and extend these initiatives. First, the Report recommends a government-wide approach to improved monetization and quantification in benefit-cost analysis. Such an approach also emphasizes the importance of a partnership with the broader research community. Second, this Report advises agencies to consider the best available scientific evidence in selecting an estimated social cost of greenhouse gases for use in their work. This advice is consistent with the 2023 memorandum from the Interagency Working Group on Social Cost of Greenhouse Gases. Third, this Report makes recommendations related to distributional analysis, with attention to cases in which some effects may be unmeasured or impossible to disaggregate across groups. Fourth, this Report recommends that agencies robustly consider the effects of competition in labor markets.

#### **A. A Government-Wide Approach to Improve Benefit-Cost Analysis**

The strength and utility of regulatory analysis depends on the continued improvement of data and methods to inform the decisions facing Federal agencies. Fuller quantification and monetization of costs and benefits of decisions can help support better policy design, inform agenda-setting, provide context on the consequences of regulatory alternatives, increase the transparency of government decisions, and facilitate public engagement. With fuller quantification and monetization, policymakers and the public may better understand, for example, the ultimate incidence of regulatory costs as they are passed on to consumers and employees; how the benefits of nature-based solutions compare to traditional infrastructure projects; and the effects of improvements to public benefit programs on the long-term health, income, and overall well-being of recipients and their families.

A government-wide effort can better effectuate improvements to quantification and monetization. Agencies face many common challenges when analyzing decisions. For example, across a wide range of agency decisions, questions arise about how to appropriately analyze risk or distributional effects. Together, agencies can share resources—including data access and personnel (such as through “detailing” employees from one agency to another)—and techniques.

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<sup>38</sup> 31 U.S.C. § 1105 note.

The National Science and Technology Council (NSTC) Subcommittee on the Frontiers of Benefit-Cost Analysis provides one avenue for these collaborations. The Frontiers subcommittee convenes experts from across agencies to identify common challenges to quantifying and monetizing important regulatory effects, share knowledge about best practices, and engage with researchers both inside and outside the government to make use of the best available science and economics. The Frontiers subcommittee released its first report detailing its findings in December 2023<sup>39</sup> and will release subsequent annual reports. In 2024 the subcommittee is hosting workshops for agencies and researchers to communicate about research advances that can help promote fuller quantification and monetization of regulatory benefits and costs.

In addition to the Frontiers subcommittee, agencies have a range of opportunities to more fully quantify and monetize effects of their actions. Agencies can also make use of Strategic Plans<sup>40</sup> and Learning Agendas<sup>41</sup> to map out and budget for efforts to refine costs and benefits. They can engage with the public—including early engagement on Learning Agendas, Strategic Plans, and Regulatory Agendas<sup>42</sup>—so that analyses can be conducted in line with the best available science (including social science, such as economics). Within available authorities, agencies can also develop partnerships with researchers to encourage the co-production of knowledge. Finally, agencies can seek support within the Executive Office of the President, such as conferring with OIRA on flexibilities that may be available under the Paperwork Reduction Act, including generic clearances, to facilitate information collections.

## **B. Quantifying the Social Cost of Greenhouse Gases Using the Best Available Evidence**

The social cost of greenhouse gases (SC-GHG) reflects the net social cost of emitting, or the net social benefit of reducing emissions of, one metric ton of greenhouse gases in a given year. Federal agencies use estimates of the SC-GHG to monetize the value of changes in greenhouse gas emissions in relevant analytical contexts.

Federal agencies have used SC-GHG estimates for more than fifteen years.<sup>43</sup> In February 2010, the Interagency Working Group on Social Cost of Carbon produced a set of social cost of carbon dioxide (SC-CO<sub>2</sub>) estimates. In May 2013, that working group updated the SC-CO<sub>2</sub> estimates to

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<sup>39</sup> Nat'l Sci. & Tech. Council, *Advancing the Frontiers of Benefit Cost Analysis: Federal Priorities and Directions for Future Research* (Dec. 2023), available at [www.whitehouse.gov/wp-content/uploads/2023/12/FINAL-SFBCA-Annual-Report-2023.pdf](http://www.whitehouse.gov/wp-content/uploads/2023/12/FINAL-SFBCA-Annual-Report-2023.pdf).

<sup>40</sup> Performance.gov Team, *A Commitment to Results: Federal Agency Strategic Plans Now Available* (Mar. 31, 2022), [www.performance.gov/blog/agency-strategic-plans-available](http://www.performance.gov/blog/agency-strategic-plans-available).

<sup>41</sup> Off. of Pers. Mgmt., *Learning Agendas*, [www.opm.gov/about-us/reports-publications/agency-plans/strategic-plan/evidence-building/learning-agenda](http://www.opm.gov/about-us/reports-publications/agency-plans/strategic-plan/evidence-building/learning-agenda).

<sup>42</sup> The most recent Unified Agenda is available at [www.reginfo.gov/public/do/eAgendaMain](http://www.reginfo.gov/public/do/eAgendaMain).

<sup>43</sup> In 2008, a federal court ordered an agency to consider the value of reducing CO<sub>2</sub> emissions in a rulemaking process, stating that “while the record shows that there is a range of values, the value of carbon emissions reduction is certainly not zero.” *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008). Federal regulations in 2008 applied SC-CO<sub>2</sub> estimates to monetize climate impacts. *See* Interagency Working Grp. on Social Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* at 3–4 (2010) (describing agency usage in past regulatory analyses).

incorporate new versions of the integrated assessment models used in the peer-reviewed literature. In August 2016, the Interagency Working Group on Social Cost of Greenhouse Gases (IWG) published estimates of the social cost of methane (SC-CH<sub>4</sub>) and nitrous oxide (SC-N<sub>2</sub>O) that were consistent with the methodology underlying the previous SC-CO<sub>2</sub> estimates. In January 2017, the National Academies of Sciences, Engineering, and Medicine issued a report providing a comprehensive set of recommendations for updating SC-CO<sub>2</sub> estimation to remain reflective of advances in the scientific understanding of climate change and its impacts on human welfare.<sup>44</sup> In February 2021, the IWG published interim estimates of the SC-GHG that reaffirmed its 2016 estimates of the social costs of the three greenhouse gases, adjusted for inflation, until the development of updated SC-GHG estimates addressing the National Academies' recommendations.

In December 2023, the IWG issued a memorandum recognizing “developments in the scientific literature” “[s]ince the research underlying the IWG’s interim estimates was published.” In that memorandum, the IWG stated that “[a]s agencies consider applying the SC-GHG in various contexts, consistent with OMB Circular No. A-4 and applicable law, agencies should use their professional judgment to determine which estimates of the SC-GHG reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making.”<sup>45</sup>

Over the past year, several agencies have reviewed developments in the scientific literature and determined or proposed to determine that updated SC-GHG estimates reflect the best available evidence. In a report dated November 2023, EPA published updated SC-GHG estimates for the agency’s own use following public comment and external peer review.<sup>46</sup> EPA has since used those updated SC-GHG estimates to monetize the value of changes in greenhouse gas emissions resulting from relevant agency actions (whether in the form of benefits<sup>47</sup> or costs<sup>48</sup>). In June 2024, the Department of Transportation’s National Highway Traffic Safety Administration assessed EPA’s 2023 estimates and concluded that they were most appropriate for monetizing

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<sup>44</sup> Nat’l Acads. of Sci., Eng’g, and Med., *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* (2017, National Academies Press), <https://www.nationalacademies.org/our-work/assessing-approaches-to-updating-the-social-cost-of-carbon>.

<sup>45</sup> Memorandum from the Interagency Working Group on Social Cost of Greenhouse Gases (Dec. 22, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/12/IWG-Memo-12.22.23.pdf> [hereinafter IWG Memorandum].

<sup>46</sup> EPA Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances (2023), <https://www.epa.gov/environmental-economics/scghg>.

<sup>47</sup> *E.g.*, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842 (Apr. 18, 2024).

<sup>48</sup> *E.g.*, PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532 (Apr. 26, 2024).

the climate benefits of its final corporate average fuel economy standards.<sup>49</sup> In July 2024<sup>50</sup> and August 2024,<sup>51</sup> the Department of Energy assessed EPA's 2023 estimates and preliminarily determined that they were most appropriate for monetizing the climate benefits of energy conservation standards.<sup>52</sup>

OMB itself has reviewed relevant scientific developments and found that EPA's 2023 estimates reflect the best available evidence on monetizing the value of changes in greenhouse gas emissions. This finding has no effect on OMB's review of analyses conducted by other agencies, such as regulatory impact analyses that are subject to OIRA review under Executive Order 12866. Reasons underlying OMB's conclusion include:

- EPA's 2023 estimates well reflect, as of today, the current state of climate science and economics. Notably, EPA's estimates incorporate socioeconomic projections, climate models, and damage functions that have all been published in the academic literature since the research underlying the IWG's interim estimates was published.
- EPA's 2023 estimates incorporate numerous modeling updates recommended by the National Academies of Sciences, Engineering, and Medicine, including the use of a modular approach whereby the methodology underlying each component of the estimation process draws on expertise from the scientific disciplines relevant to that component. This modular approach improves consistency with current scientific knowledge, enhances analytical transparency, and allows for more explicit representation of uncertainty. For each module, EPA relied on peer-reviewed scientific literature reflecting the state-of-the-science.
- EPA's 2023 estimates reflect current economic research on discounting. By applying a central 2.0% near-term discount rate that accounts for long-run uncertainty, EPA's

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<sup>49</sup> Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030 and Beyond, 89 Fed. Reg. 52,540 (June 24, 2024). The Department of Transportation has also adopted EPA's 2023 SC-GHG estimates in other contexts. *E.g.*, Dep't of Transp., Benefit-Cost Analysis Guidance for Discretionary Grant Programs (last updated Dec. 5, 2023).

<sup>50</sup> Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).

<sup>51</sup> Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers, 89 Fed. Reg. 68,788 (Aug. 28, 2024).

<sup>52</sup> Several other agencies have applied EPA's 2023 estimates in various contexts. *E.g.*, Dep't of the Treasury, The Inflation Reduction Act's Benefits and Costs (Mar. 1, 2024), <https://home.treasury.gov/news/featured-stories/the-inflation-reduction-acts-benefits-and-costs>; Gen. Servs. Admin., Draft Environmental Impact Statement for the Kenneth G. Ward (Lynden) and Sumas Land Ports of Entry Modernization and Expansion Projects Lynden and Sumas, Washington (Aug. 2024).

approach is aligned with OMB’s current guidance in Circular No. A-4 and Circular No. A-94.<sup>53</sup>

- External and expert peer reviewers concluded that EPA’s 2023 estimates are a substantial improvement over pre-existing estimates and reflect significant advancements in climate science and economics.<sup>54</sup>

As federal agencies continue to monetize the value of changes in greenhouse gas emissions in various contexts, including benefit-cost analyses conducted under Executive Order 12866, they should consider the “variety of developments in the scientific literature” made “[s]ince research underlying the IWG’s interim estimates was published” and make their own judgments about which estimates of the SC-GHG “reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making.”<sup>55</sup>

### C. Distributional Analysis Under Incomplete Information

Agencies may sometimes be in a position to evaluate a regulatory alternative with more desirable distributional effects against another with higher monetized net benefits. This judgment could be informed by provisions in the statutory scheme. The agency may also wish to consult relevant public input and consider how it may have previously assigned implicit weights to distributional considerations.

As a general matter, agencies should endeavor to maintain consistency in how they consider distributional considerations, or explain any variations across regulatory contexts. In addition, agencies may also consider how to offset or compensate for any undesirable distributional consequences through other agency actions, such as grants or spending programs (Cecot 2023, Revesz 2018, Farrow 1998).

In some cases, the comparison of regulatory alternatives may be complicated by distributional effects that are unquantified or unmonetized (Sunstein 2014, Revesz and Yi 2022), either because benefit and cost monetization is incomplete or because monetized estimates of benefits and costs are available but it is infeasible to estimate who ultimately experiences those effects. Circular No. A-4’s “*Methods for Treating Non-Monetized Benefits and Costs*” section provides more detail on how to incorporate non-monetized benefits and costs into regulatory analysis, which can be useful to consider alongside the “*Distributional Effects*” section when distributional considerations are relevant. Agencies should seek to bring both quantitative and qualitative evidence to bear on the evaluation of distributional effects.<sup>56</sup> Non-monetized

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<sup>53</sup> OMB plans to update the social rate of time preference estimate every three years, rounded to the tenths place, in the Appendix to Circular No. A-4. Circular No. A-94’s discount rates in Appendix D will also be updated every three years, in sync with Circular No. A-4. See OMB Circular No. A-4: Explanation and Response to Public Input (Nov. 9, 2023).

<sup>54</sup> Final Comments Summary Report, External Letter Peer Review of Technical Support Document: Social Cost of Greenhouse Gas (2023).

<sup>55</sup> IWG Memorandum at 1.

<sup>56</sup> Circular No. A-4, at 62–64.

distributional effects can inform the choice among regulatory alternatives, but agencies should take care in analyzing and discussing them.

An analysis of distributional effects using explicit weights, *e.g.*, income-based weights that account for diminishing marginal utility, is conceptually distinct from a traditionally weighted analysis of net benefits.<sup>57</sup> To see this, imagine that a previous distributional analysis could not fully characterize the incomes of people who experience effects, but new data becomes available, thus allowing for income weights to be applied. An analyst would not add this newly available income-weighted dollar amount to the previously estimated, traditionally weighted net benefits figure. Bearing this important distinction in mind, it may nonetheless be useful for an analyst to gather available evidence and discuss unquantified or unmonetized distributional effects, consistent with Circular No. A-4. If some distributional effects can be monetized and others cannot, a “threshold” or “break-even” income-weighted distributional analysis may be considered for inclusion in a regulatory analysis. A break-even income-weighted analysis would ask how large traditionally weighted effects would have to be for income-weighted net benefits to be positive, or to change which regulatory alternative is most net beneficial under income weighting. Again, the consideration of distributional effects generally, or income-weighted distributional effects in particular, is an exercise separate from the estimation of traditionally weighted net benefits (though inputs overlap). Both forms of analysis may inform regulatory choices.

#### **D. General Equilibrium and Market Competition Effects on Labor Markets**

Some regulations are explicitly labor market regulations, and it is no surprise that these regulations affect the labor market. Other regulations do not directly cover workers or labor markets, but they nonetheless affect these markets indirectly. These indirect effects can occur through both price and non-price linkages between markets (so-called general equilibrium effects). A regulation can induce workers or investment to move across firms or sectors, and the regulation itself can have important effects on the overall employment, productivity, and health of workers. Indirect effects can also be caused or reinforced by imperfect competition in the labor or output markets. There is substantial interest in the effect of non-labor regulations on labor markets, and recent research has enriched our understanding of the topic, as discussed below.

Given the different effects that can result from general-equilibrium mechanisms and imperfect competition, when analyzing labor-market effects of their regulations, agencies should consider both direct and indirect effects. Agencies should also consult recent OMB guidance on competition effects to assess whether market power causes the effects of a regulation to spill

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<sup>57</sup> Circular No. A-4 defines traditional weights as those “such that a dollar is equal in value for each person, regardless of income (or other economic status).” *Id.* at 65.



over to additional markets and whether the regulation induces changes in market power, particularly for the labor market.<sup>58</sup>

Broadly, effects of a regulation or shock to one market that in turn affect other markets are characterized as a type of general equilibrium effect. General equilibrium effects can dampen or amplify the influence of regulation on employment and wages. As an example of the former, if a regulation displaces workers from a regulated industry, some of those workers can, in theory, find employment in other industries (Hafstead et al 2018, Gray et al 2023). Theoretical and empirical evidence on the magnitude and duration of such shocks (for example, Walker 2013) continues to evolve. The field of macroeconomics has extensively considered the propagation of shocks through the economy, including the types of firm- and industry-specific shocks that can result from regulation. Much of the macroeconomic literature does suggest that shocks tend to be short-term and dampened in general equilibrium unless they are amplified by particular market rigidities. However, more recent research has suggested that even shocks to particular firms and industries can be amplified by input-output linkages and other forces (Acemoglu et al. 2016, Atalay 2017). And, researchers have found empirical evidence of long-term localized impacts of policy in some cases (Autor et al. 2016, 2021). Thus, there can be value in assessing not only the direct impacts of a regulation, but also its indirect impacts, including on labor markets. When general equilibrium effects are large or persistent, analyzing the effects of regulations on other markets becomes particularly salient.

Research has shown that general equilibrium effects can be important to labor markets specifically, including markets that are not directly connected to regulated entities.<sup>59</sup> For example, higher air pollution levels reduce worker productivity (Graff Zivin & Neidell 2012, 2013; Chang et al 2016) and employment (Borgschulte et al., forthcoming). Thus, reductions in air pollution induced by regulation (which can be modeled as an increase in price for a hypothetical pollution input market) can increase productivity and labor demand broadly across the economy, leading to increased employment. This effect has been shown to hold empirically in the context of regulations stemming from the Clean Air Act, with a study finding 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 regulations stemming from the Act (Isen et al 2017). Similar results have recently been found in the context of climate change. Research shows that higher temperature and rainfall reduce worker labor supply (Connolly 2008, Graff Zivin and Neidell 2014, Neidell et al. 2021). Increasing rainfall volatility as the climate changes is also projected to cause more frequent reductions in labor demand (Downey et al. 2023). Higher temperature reduces test scores and can harm educational attainment (Graff Zivin et al. 2018, Park et al. 2020, Park et al. 2021a). And high temperatures increase the rate of on-the-job injuries (Park et al. 2021b). Policies to mitigate climate change would help avoid these many

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<sup>58</sup> Off. of Mgmt. & Budget, *Guidance on Accounting for Competition Effects when Developing and Analyzing Regulatory Actions* (October 2023), available at [www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf).

<sup>59</sup> Some of the studies cited in this paragraph use data on broad sets of workers, such that a portion of the observed effects are associated with directly-regulated entities. We do not intend to imply otherwise, despite framing the discussion as about general equilibrium effects.

negative consequences on the labor market. Regulations that help workers avoid on-the-job exposure to high temperature can also help the economy adapt to a warming climate (Day et al. 2019, Szewczyk et al. 2021).<sup>60</sup>

Regulations or other Federal interventions can also directly lead to improved labor markets. For example, contractual terms that limit workers’ mobility—such as non-compete agreements—provide employers with labor market power that suppresses worker compensation (Balasubramanian et al. 2022, Lipsitz & Starr 2022). The Federal Trade Commission estimates that its rule prohibiting most non-compete agreements<sup>61</sup> will result in hundreds of billions of dollars in increased worker earnings, increased patenting activity (and consequent innovation), and reduced consumer prices in affected industries.<sup>62</sup> The Departments of Labor and Defense have worked to reduce unnecessary occupational licensing requirements affecting veterans and military spouses.<sup>63</sup> Recent evidence suggests that such interventions are likely to produce substantial increases in social welfare, all else being equal (Kleiner et al. 2023).

Labor market regulation can be particularly fruitful where labor market frictions exist (*e.g.*, incomplete information) or labor markets are imperfectly competitive. Recent research shows evidence that monopsony power—firms exercising market power to reduce worker wages—is widespread in the American economy (Prager & Schmitt 2021, Callaci et al. 2024). Two studies find that the average U.S. labor market is “highly concentrated” under the DOJ-FTC Horizontal Merger Guidelines, potentially consistent with employer market power (Azar et al. 2020, 2022; Benmelech et al. 2022). Studies of labor supply responses to wage changes are similarly consistent with monopsony (Staiger et al. 2010, Dube et al. 2020). In U.S. manufacturing, a recent study finds that workers earn just 65 cents per dollar of revenue generated (Yeh et al. 2022).

In markets characterized by substantial employer labor market power, regulations that counteract that labor market power can be welfare-enhancing (Hafiz & Marinescu 2023). For example, theory and evidence on minimum wage increases show that minimum wage laws can increase employment and output under imperfect competition (Bhaskar et al. 1999, Azar et al. 2024). Given sufficient similarity in labor-market structure and conditions, economic theory predicts that regulations such as the Department of Labor’s overtime rule, which affect wages through a

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<sup>60</sup> Note that some of the climate-related regulatory interventions in the labor market are classified as low-impact by Day et al. (2019), and Szewczyk et al. (2021) do not clearly distinguish between government-mandated and voluntary standard-setting.

<sup>61</sup> Fed. Trade Comm’n, Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024). A Federal court issued an injunction against this rule in August 2024.

<sup>62</sup> *Id.* at 38,470. Some of these effects are plausibly distributional changes, *e.g.*, reallocation of surplus from other factors of production to labor. Other effects plausibly change aggregate efficiency, *e.g.*, through patenting or reductions in unproductive labor-market search by both workers and firms.

<sup>63</sup> Dep’t of the Treasury, The State of Labor Market Competition 57–58 (2022), [available at home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf](https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf).

different mechanism, may have similar effects.<sup>64</sup> Similarly, social welfare improvement is possible as a result of worker safety regulation (Kniesner & Leeth 1988, Herzog & Schlottmann 1990).<sup>65</sup> As is the case for policies such as the minimum wage, the extent to which gains by workers counteract employer labor market power—increasing aggregate output—or are offset by employment or hour reduction depends on the pre-existing extent of employer market power in the relevant market and the size of the policy’s effect (Cengiz et al. 2019). More research on the relationship between regulation and employment effects in markets with market power will be useful as agencies work to implement recent OMB guidance on incorporating competition effects into regulatory analyses.<sup>66</sup>

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<sup>64</sup> In some contexts, new eligibility for overtime compensation (as implemented by, for example, Department of Labor, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 89 Fed. Reg. 32,842 (Apr. 26, 2024)) could have the same impact as an exogenous minimum-wage increase, though overtime rules allow for more margins of response by firms, potentially complicating analysis. The Department of Labor’s overtime rule is subject to pending litigation.

<sup>65</sup> See also the discussion of Herzog & Schlottmann (1990) appearing in Department of Health and Human Services, *Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs*, 86 Fed. Reg. 68,097 (Nov. 30, 2021).

<sup>66</sup> 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 [www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf](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 or the Act). This report on agency compliance with UMRA covers the period of October 2022 through September 2023; rules published before October 2022 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 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.<sup>67</sup> 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.<sup>68</sup> Section 205(a) 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.<sup>69</sup> Section 205(a) 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.<sup>70</sup>

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.<sup>71</sup> Title II also singles out small governments for particular attention.<sup>72</sup> OMB’s guidelines assist Federal agencies in complying with the Act and are based upon the following general principles<sup>73</sup>:

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<sup>67</sup> 2 U.S.C. § 1531.

<sup>68</sup> *Id.* § 1532(a).

<sup>69</sup> *Id.* § 1535(a).

<sup>70</sup> *Id.* § 1535(b).

<sup>71</sup> *Id.* § 1534(a).

<sup>72</sup> *Id.* § 1533(a).

<sup>73</sup> Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-95-09, *Guidance for Implementing Title II of S. 1* (Mar. 31, 1995), available at [www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/1995-1998/m95-09.pdf](http://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/1995-1998/m95-09.pdf) [hereinafter OMB M-95-09].

- 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, 2022, to September 30, 2023, that impose expenditures meeting the UMRA Title II threshold.<sup>74</sup> 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 FY23 and Subject to Sections 202 or 205 of UMRA**

<i>Agency</i>	<i>Rule Title</i>	<i>Description</i>
Environmental Protection Agency	Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act	This rule restricts the use of HFCs in sectors or subsectors including the refrigeration, air conditioning, aerosol, and foam sectors.
Environmental Protection Agency	TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances	With this rule, persons that manufacture (including import) or have manufactured these chemical substances (PFAS) in any year since 2011 are subject to reporting and recordkeeping requirements.

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<sup>74</sup> 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.

<b><i>Agency</i></b>	<b><i>Rule Title</i></b>	<b><i>Description</i></b>
Environmental Protection Agency	Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards	This action finalizes Federal Implementation Plan requirements to address 23 states' obligations to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 ozone National Ambient Air Quality Standards in other states.
Environmental Protection Agency	Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards	This rule finalizes a program to reduce air pollution, including ozone and particulate matter, from heavy-duty engines and vehicles.
Department of Energy	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces	This rule prescribes energy conservation standards for residential furnaces.
Department of Energy	Energy Conservation Standards for Pool Heaters	This rule prescribes energy conservation standards for pool heaters.
Department of Health and Human Services	Requirements for Additional Traceability Records for Certain Foods	This rule establishes recordkeeping requirements for entities that manufacture, process, pack, or hold foods that are designated as high-risk foods.

**APPENDIX A:  
REPORTED FINAL RULES ON WHICH OMB CONCLUDED REVIEW IN FY23**<sup>75</sup>

**Table A. Reported Final Rules on which OMB Concluded Review in FY23**

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i> <sup>76</sup>
Department of Justice	Factoring Criteria for Firearms with an Attached Stabilizing Brace	<a href="#">1140-AA55</a>
Department of Homeland Security	Exercise of Time-Limited Authority to Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change	<a href="#">1615-AC82</a>
Department of Homeland Security	Hermit's Peak/Calf Canyon Fire Assistance	<a href="#">1660-AB14</a>
Department of Housing and Urban Development	Increased 40-year Term for Loan Modifications (FR-6263)	<a href="#">2502-AJ59</a>
Department of Education	Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control	<a href="#">1840-AD69</a>
Department of Education	RIN 1840-AD53 Borrower defense; 1840-AD59 Total and Permanent Disability, Closed School, and False Cert Discharges; 1840-AD70 Public Service Loan Forgiveness; 1840-AD71 Interest Capitalization	<a href="#">1840-AD53</a>
Office of Personnel Management	Postal Service Health Benefits Program	<a href="#">3206-AO43</a>
Department of Veterans Affairs	Reimbursement for Emergency Treatment	<a href="#">2900-AQ08</a>
Department of Transportation	National Electric Vehicle Infrastructure Formula Program	<a href="#">2125-AG10</a>
Environmental Protection Agency (EPA)	Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years	<a href="#">2060-AV45</a>
EPA	Volume Requirements for 2023 and Beyond Under the Renewable Fuel Standard Program	<a href="#">2060-AV14</a>
EPA	Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards	<a href="#">2060-AV51</a>
EPA	Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards	<a href="#">2060-AU41</a>
Department of Agriculture	Pandemic Assistance Programs	<a href="#">0503-AA75</a>
Department of State	Schedule of Fees for Consular Services--Nonimmigrant and Special Visa Fees	<a href="#">1400-AF33</a>

<sup>75</sup> As discussed in more detail in Chapter I, the accounting statements' reported rules include all Executive Branch final rules that meet at least one of the following three conditions: designated as meeting the criteria set forth in 5 U.S.C. § 804(2); designated as meeting the analysis threshold under UMRA; or designated as "significant" under § 3(f)(1) of Executive Order 12866.

<sup>76</sup> In 2010, OMB issued a memorandum on "Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN)," which is available at [www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforg/IncreasingOpenness\\_04072010.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforg/IncreasingOpenness_04072010.pdf). The memorandum provides that agencies should use the RIN on all relevant documents throughout the entire "lifecycle" of a rule. We believe that this requirement helps members of the public to find regulatory information at each stage of the process and is promoting informed participation. Where possible, links to RIAs are provided.



<b>Agency</b>	<b>Rule Title</b>	<b>RIN</b> <sup>76</sup>
Pension Benefit Guaranty Corporation	Special Financial Assistance by PBGC–Withdrawal Liability Condition Exception	<a href="#">1212-AB53</a>
Department of Labor	Implement SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500	<a href="#">1210-AB97</a>
Department of Labor	Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights	<a href="#">1210-AC03</a>
Department of Justice	Partial Filling of Prescriptions for Schedule II Controlled Substances	<a href="#">1117-AB45</a>
Department of the Interior	Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations	<a href="#">1018-BF64</a>
Department of Health and Human Service (HHS)	Contract Year 2024 Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan Programs, Medicare Overpayment Provisions of the Affordable Care Act, and PACE (CMS-4201)	<a href="#">0938-AU96</a>
HHS	Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020; Risk Adjustment Data Validation (CMS-4185)	<a href="#">0938-AT59</a>
HHS	Basic Health Program; Federal Funding Methodology for Program Year 2023 and Proposed Changes to Basic Health Program Regulations (CMS-2441)	<a href="#">0938-AU89</a>
HHS	CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1772)	<a href="#">0938-AU82</a>
HHS	CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1770)	<a href="#">0938-AU81</a>
HHS	CY 2023 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1768)	<a href="#">0938-AU79</a>
HHS	CY 2023 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS-1766)	<a href="#">0938-AU77</a>
Department of Energy (DOE)	Energy Conservation Standards for Room Air Conditioners	<a href="#">1904-AD97</a>
DOE	Energy Conservation Standards for Air Cleaners	<a href="#">1904-AF46</a>
DOE	Energy Conservation Standards for Pool Heaters	<a href="#">1904-AD49</a>
HHS	Requirements For Additional Traceability Records For Certain Foods	<a href="#">0910-AI44</a>
HHS	Mammography Quality Standards Act	<a href="#">0910-AH04</a>
HHS	Streamlining the Medicaid, CHIP, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS-2421)	<a href="#">0938-AU00</a>
HHS	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS-1785)	<a href="#">0938-AV08</a>
Department of Education	Improving Income Driven Repayment	<a href="#">1840-AD81</a>
HHS	FY 2024 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1779)	<a href="#">0938-AV02</a>
HHS	FY 2024 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1787)	<a href="#">0938-AV10</a>
HHS	FY 2024 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1781)	<a href="#">0938-AV04</a>
HHS	Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage (CMS-1739)	<a href="#">0938-AU24</a>

<b>Agency</b>	<b>Rule Title</b>	<b>RIN</b> <sup>76</sup>
HHS	Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415)	<a href="#">0938-AU75</a>
HHS	HHS Notice of Benefit and Payment Parameters for 2024 (CMS-9899)	<a href="#">0938-AU97</a>
Department of Commerce	Preventing the Improper Use of CHIPS Act Funding	<a href="#">0693-AB70</a>
Department of the Treasury	Coronavirus State and Local Fiscal Recovery Funds	<a href="#">1505-AC81</a>
Department of Veterans Affairs	Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter	<a href="#">2900-AR25</a>
Department of Transportation	Accessible Lavatories on Single-Aisle Aircraft: Part II	<a href="#">2105-AE89</a>
Department of Labor	Updating the Davis-Bacon and Related Acts Regulations	<a href="#">1235-AA40</a>
EPA	TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances	<a href="#">2070-AK67</a>
EPA	Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act (TSCA)	<a href="#">2070-AK99</a>
DOE	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces	<a href="#">1904-AD20</a>
DOE	Energy Conservation Standards for Commercial Water Heating-Equipment	<a href="#">1904-AD34</a>
DOE	Energy Conservation Standards for Dedicated-Purpose Pool Pump Motors	<a href="#">1904-AF27</a>
DOE	Energy Conservation Standards for Electric Motors	<a href="#">1904-AE63</a>
EPA	Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act	<a href="#">2060-AV46</a>
Architectural and Transportation Barriers Compliance Board	Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way	<a href="#">3014-AA26</a>
HHS	Separate Licensing Standards for Relative or Kinship Foster Family Homes	<a href="#">0970-AC91</a>
Department of Education	Gainful Employment	<a href="#">1840-AD57</a>
Department of the Treasury	Proposed Changes to Section 36B Regarding the Premium Tax Credit	<a href="#">1545-BQ16</a>
Federal Acquisition Regulation Council	Federal Acquisition Regulation (FAR); FAR Case 2020-011, Implementation of FASC Exclusion Orders	<a href="#">9000-AO13</a>

## APPENDIX B: RESPONSE TO COMMENTS

We wish to express our sincere appreciation for the peer reviews and public comments we received on the draft Report. In particular, we would like to thank our invited peer reviewers: Catherine Kling (Cornell University), Matthew Neidell (Columbia University), and Jack Wells (Northeast-Midwest Institute and former Chief Economist of the U.S. Department of Transportation). We are grateful for their time and the thoughtfulness of their comments and have implemented several of their suggestions in this document. 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.

*Peer Reviewer A recommends that the report provide clearer suggestions and stronger encouragement of academic research or government investment toward the goal of filling evidence gaps related to regulatory effects.* As noted in Chapter III, publications and activities of the Subcommittee on the Frontiers of Benefit-Cost Analysis provide extensive discussion of such topics. More detail is available at <https://www.whitehouse.gov/omb/information-regulatory-affairs/frontiers-of-benefit-cost-analysis/>.

*Regarding the Social Cost of Greenhouse Gases, Peer Reviewer B seeks clarification about the “analytical contexts” in which estimates should be used. Peer Reviewer A states that “the EPA 2023 numbers are well vetted and agreed upon by a large professional base, and therefore should become the default value” (a position echoed by Public Commenter Y). By contrast, Public Commenter X expresses concern about the SC-GHG estimates and the process under E.O. 13990 for developing them.* We acknowledge this range of views and will monitor scientific and administrative processes that might be relevant to SC-GHG-related content in future Reports.

*Public Commenter Y recommends that regulatory analyses “avoid problematic concepts... like lost smoking pleasure from stopping smoking or use of [other] tobacco products.”* There are some regulatory interventions that are designed to change the user experience, so such change would be a key element of estimating regulatory effects (including consumption changes, which would be associated with net welfare effects). The 2023 update to Circular A-4 discusses incorporation of behavioral biases into benefit-cost analysis as an area of substantial recent advancements—for example, the publication in the last ten years of a textbook on the topic (Weimer, 2017).

*Peer Reviewer C offers numerous observations and recommendations reflecting the perspective of report readers who lack familiarity with past reports. For example, this reviewer mentions lack of definitions of “lower bound” and “upper bound” as those terms are used in the accounting statements.* Lower and upper bounds, as presented in this report, do *not* necessarily represent 5 percent and 95 percent confidence bounds from formal quantitative uncertainty analysis. More generally, we acknowledge that we often prioritize continuity of presentation across years, but as we become aware of how to facilitate new uses of the report, we will make revisions accordingly.

**List of peer reviewers and public commenters:**

Peer Reviewer A: Catherine Kling (Cornell University)

Peer Reviewer B: Matthew Neidell (Columbia University)

Peer Reviewer C: Jack Wells (Northeast-Midwest Institute)

Public Commenter X: Andrew Baxter (American Petroleum Institute)

Public Commenter Y: American Lung Association

## **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 consultation activities by agencies whose actions affect State, local, and tribal governments.<sup>77</sup>

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.

### **Department of Agriculture (USDA)**

#### ***Supplemental Nutrition Assistance Program: Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act of 2023***<sup>78</sup>

Because SNAP is State-administered, FNS has formal and informal discussions with State and local officials on an ongoing basis regarding program requirements and operations. For example, SNAP participated in three webinars covering FRA implementation and responded to State agency questions and concerns over implementation. SNAP also is providing ongoing technical assistance with State agencies covering implementation of the FRA and work requirements more generally. FNS provided an opportunity for Tribal consultation on March 15, 2024.

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<sup>77</sup> 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 Federal consultation activities.

<sup>78</sup> <https://www.federalregister.gov/documents/2024/12/17/2024-29072/supplemental-nutrition-assistance-program-program-purpose-and-work-requirement-provisions-of-the>

***Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans***<sup>79</sup>

USDA conducted a Tribal Consultation in Spring 2023. During this session, many participants expressed support for the term “traditional foods” as defined in the Agricultural Improvement Act of 2014 and as used in a regulatory provision. USDA also held over 50 listening sessions with stakeholder groups that represent national, State, and local interests.

***Food Distribution Programs: Improving Access and Parity***<sup>80</sup>

On November 8, 2022, December 6 and 13, 2022, February 22, 2023, June 27, 2023, and February 16, 2024, FNS provided the opportunity for Tribal consultation.

**Department of Commerce (DOC)**

***Fisheries of the Exclusive Economic Zone off Alaska; Cook Inlet Salmon; Amendment 16***<sup>81</sup>

On February 17, 2023, NMFS e-mailed letters notifying Alaska Native representatives that the management of salmon fisheries in the Federal (EEZ) marine waters of upper Cook Inlet would be presented to the Council for review, with an invitation to participate in the process and contribute to fishery decisions at the April 2023 meeting. NMFS met with the Chickaloon Village Traditional Council (CVTC).

NMFS was invited by Alaska Native representatives to speak on this action at the Tikahtnu Forum Meeting on February 24, 2023, the Kenaitze/Salamatof Hunting Fishing and Gathering Commission Meeting on March 7, 2023, and the Cook Inlet Fishers Group on March 30, 2023, to listen to Tribal perspectives, provide information and answer questions on the action.

On April 21, 2023, NMFS sent an announcement to Alaska Native representatives stating the agency was under a court order to implement an amendment to the Salmon FMP by May 1, 2024. NMFS provided a second invitation for tribal consultation and engagement opportunities on this issue. NMFS held tribal consultation on this action with the Salamatof Tribe on May 22, 2023, and with the Chickaloon Native Village (CNV) on June 20, 2023.

On December 5, 2023, NMFS met with tribal representatives from the Cook Inlet Tribal Fishers Group, which included the Knik Tribal Council, CVTC, and NTC. At the close of the meeting,

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<sup>79</sup> <https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>

<sup>80</sup> <https://www.federalregister.gov/documents/2024/10/31/2024-24966/food-distribution-programs-improving-access-and-parity>

<sup>81</sup> <https://www.federalregister.gov/documents/2024/04/30/2024-08664/fisheries-of-the-exclusive-economic-zone-off-alaska-cook-inlet-salmon-amendment-16>

participants agreed that a follow up tribal engagement meeting on this action would be pertinent in January 2024.

On January 9, 2024, NMFS met with 11 Alaska Native representatives, including the NVC, CVTC, Seldovia Village Tribe, NTC, Knik Tribe, Native Village of Eklutna, Kenaitze Tribe, Chugach Regional Resource Commission, Ninilchik Native Association, Tyonek Native Corporation, and the Salamatof Tribe. NMFS listened to tribal concerns and perspectives regarding the new idea for an indigenous subsistence fishery set-aside and provided a status update on the amendment 16 process.

### **Consumer Financial Protection Bureau (CFPB)**

#### ***Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders***<sup>82</sup>

Among other meetings, the Bureau's consultation efforts included presentations to State and Tribal governments on October 13, October 20, October 27, November 3, November 10, November 17, and November 21, 2022, explaining proposals then under consideration and requesting feedback. In addition, on October 31, 2022, Bureau staff met with State financial regulators and staff of the Conference of State Bank Supervisors to discuss technical questions. Input included concerns State agencies expressed regarding possible duplication between any registration system the Bureau might build and existing registration systems. This input also included concerns Tribal governments expressed regarding maintaining Tribal sovereignty.

### **Environmental Protection Agency (EPA)**

#### ***Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention***<sup>83</sup>

EPA has engaged States and local communities to discuss chemical safety issues. In two listening sessions and three proposal hearings, held between July, 2021, and September, 2022, States and local communities identified lack of facility coordination with local responders and the community as a key barrier to successful local community preparedness. Additionally, EPA has held consultations with States and local communities through participation in the National Association of SARA Title III Program Officials (NASTTPO) annual meetings to discuss key issues related to chemical facility and local community coordination.

On April 7, 2022, September 1, 2022, and September 5, 2023, EPA met with small governments concerning regulatory requirements that might affect them. On August 31, 2022, EPA sent a notification letter via e-mail to Tribal leaders of all 574 federally recognized Tribes to inform

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<sup>82</sup> <https://www.federalregister.gov/documents/2024/07/08/2024-12689/registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders>

<sup>83</sup> <https://www.federalregister.gov/documents/2024/03/11/2024-04458/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act-safer>

them of a proposed rulemaking and to provide an opportunity to comment on the action through a Tribal consultation meeting on September 21, 2022.

***Clean Water Act Section 404 Tribal and State Assumption Program***<sup>84</sup>

The Agency sent a “Notification of Consultation and Coordination” letter, dated October 19, 2018, to all Tribes federally recognized at that time. The Agency engaged with Tribes over a 60-day consultation period that concluded on December 21, 2018, including two Tribes-only informational webinars on November 20 and 29, 2018. During this consultation period, EPA participated in in-person meetings with Tribal associations, including a presentation for the National Tribal Water Council on October 24, 2018, and an informational session at the National Congress of American Indians 75th Annual Convention on October 24, 2018. The Agency also attended the EPA Region 9 Regional Tribal Operations Committee (RTOC) meeting on October 31, 2018, the EPA Region 6 RTOC meeting on November 28, 2018, and the EPA Region 7 Enhancing State and Tribal Programs Wetland Symposium on November 5, 2018. At the meetings and webinars, EPA sought input on aspects of the section 404 Tribal and State program regulations and assumption process.

The Agency initiated a second Tribal consultation and coordination period on July 18, 2023. The Agency engaged with Tribes over a 60-day period that concluded on September 17, 2023, including two Tribal input sessions on August 15 and 30, 2023. During this consultation period, EPA participated in various meetings with Tribal associations.

***National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI)***<sup>85</sup>

On October 13, 2022, EPA held a federalism consultation through a virtual meeting. The EPA also provided the members of various associations an opportunity to provide input during follow-up meetings. The EPA received requests for additional meetings and held meetings with the Association of State Drinking Water Administrators and member States on October 5, 2022, and November 2, 2022.

Between October 6, 2022, and December 9, 2022, EPA consulted with federally recognized Indian Tribes. The consultation included webinars on October 27, 2022, and November 9, 2022. A total of eleven Tribal representatives participated in the two webinars.

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<sup>84</sup> <https://www.federalregister.gov/documents/2024/12/18/2024-29484/clean-water-act-section-404-tribal-and-state-assumption-program>

<sup>85</sup> <https://www.federalregister.gov/documents/2024/10/30/2024-23549/national-primary-drinking-water-regulations-for-lead-and-copper-improvements-lcri>



### ***Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels***<sup>86</sup>

EPA invited the following national organizations representing State and local elected officials to a consultation meeting on November 10, 2022: National Governors' Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, National Association of Counties, National Association of Towns and Townships, County Executives of America, and Environmental Council of the States. Additionally, the agency invited professional organizations that represent or have State and local government members, such as Public Housing Authorities Directors Association, Council of Large Public Housing Authorities, Association of State and Territorial Health Officials, and American Public Works Association. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA also consulted with Tribal officials. The Agency provided an opportunity for consultation from July 24, 2023, to September 22, 2023, with consultation sessions on August 9 and 10, 2023.

### ***Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights***<sup>87</sup>

The EPA held a 90-day pre-proposal Tribal consultation and coordination period from June 15 through September 13, 2021, to inform development of a proposed rulemaking. In addition to two national Tribal listening sessions held in July and August 2021, the EPA presented at 20 meetings of Tribal staff and leadership, as well as held seven staff-level coordination meetings and seven leader-to-leader meetings at the request of Tribes. EPA continued outreach and engagement with Tribes at national and regional Tribal meetings after the end of the consultation period.

EPA held a second 90-day Tribal consultation and coordination period from November 30, 2022, to February 28, 2023. During the second Tribal consultation and coordination period, EPA held two additional national listening sessions for Tribal representatives, in January, 2023, as well as seven leader-to-leader meetings and twelve staff-level coordination meetings with representatives of individual Tribes upon request.

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<sup>86</sup> <https://www.federalregister.gov/documents/2024/11/12/2024-25070/reconsideration-of-the-dust-lead-hazard-standards-and-dust-lead-post-abatement-clearance-levels>

<sup>87</sup> <https://www.federalregister.gov/documents/2024/05/02/2024-09427/water-quality-standards-regulatory-revisions-to-protect-tribal-reserved-rights>

## **Federal Communications Commission (FCC)**

### ***The Emergency Alert System and Wireless Emergency Alerts***<sup>88</sup>

The Office of Native Affairs and Policy (ONAP) arranged and participated in several consultation and listening sessions with leaders, representatives, and members of federally recognized Tribes and their communities. The consultative events and related *ex parte* meetings took place in May and June, 2024, both in person and virtually. Commission staff solicited feedback from Tribal participants and explained how Tribal participants could engage in the rulemaking process through comment submissions in the relevant dockets.

## **Health and Human Services Department (HHS)**

### ***Adult Protective Services Functions and Grants Programs***<sup>89</sup>

Consensus Guidelines were developed with extensive input from the Adult Protective Services (APS) community, including State and local officials. Interested parties were invited to provide feedback for the proposed updates to the Consensus Guidelines through a public comment period and five webinars. Five webinars were held during April and May, 2019, hosting approximately 190 participants, representing 39 States and the District of Columbia. Participants represented ten fields, with most participants representing the APS network (66 percent); the vast majority of these APS programs are administered and staffed by State and local government entities. The Administration of Community Living (ACL) solicited input from affected Federally recognized Tribes on October 12, 2023.

### ***Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)***<sup>90</sup>

The Administration for Children and Families (ACF) hosted a national webinar specifically for Tribal Lead Agencies and held a formal consultation session virtually in July 2023 with Tribal leaders and Tribal CCDF staff. Tribes and Tribal organizations were informed of these events through letters to Tribal leaders and announcements to Tribal CCDF administrators.

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<sup>88</sup> <https://www.federalregister.gov/documents/2024/09/06/2024-19530/the-emergency-alert-system-and-wireless-emergency-alerts>

<sup>89</sup> <https://www.federalregister.gov/documents/2024/05/08/2024-07654/adult-protective-services-functions-and-grants-programs>

<sup>90</sup> <https://www.federalregister.gov/documents/2024/03/01/2024-04139/improving-child-care-access-affordability-and-stability-in-the-child-care-and-development-fund-ccdf>

### ***Removal of Outdated Regulations***<sup>91</sup>

Notification regarding a Tribal consultation session was sent via a Dear Tribal Leader Letter on January 17, 2024. The consultation session was conducted virtually on February 27, 2024.

### ***Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes and Native Hawaiian Grantees for Supportive, Nutrition, and Caregiver Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities***<sup>92</sup>

ACL conducted a listening session on April 18, 2022, at the national conference for Tribal organization grantees. Additionally, a Tribal consultation meeting took place at the National Title VI Conference April 12, 2023.

### ***Supporting the Head Start Workforce and Consistent Quality Programming***<sup>93</sup>

ACF conducts an average of five Tribal consultations each year for Tribes operating Head Start programs. The consultations are held in various geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other Tribal meetings or conferences, to ensure opportunities for most of the 150 Tribes served through Head Start to be able to attend and voice their concerns and issues. The Tribal consultation held on December 5, 2023, in Costa Mesa, California, provided an opportunity for Tribes in attendance to share reactions and input specifically about an NPRM released on November 20, 2023.

### ***Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water***<sup>94</sup>

FDA held a consultation with Federally recognized Indian tribes on February 4, 2022. Additionally, FDA participated in a webinar hosted by the National Association of State Departments of Agriculture (NASDA) on December 15, 2021, as well as five regional meetings (Southern Region (March 14, 2022); Western Region (March 11, 2022); Northwestern Region (March 2, 2022); North Central Region (March 2, 2022); and Northeast Region (March 11, 2022)) that were sponsored by State regulatory partners and attended by farms, irrigation districts, educators, environmental groups, and others.

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<sup>91</sup> <https://www.federalregister.gov/documents/2024/04/30/2024-09152/removal-of-outdated-regulations>

<sup>92</sup> <https://www.federalregister.gov/documents/2024/02/14/2024-01913/older-americans-act-grants-to-state-and-community-programs-on-aging-grants-to-indian-tribes-and>

<sup>93</sup> <https://www.federalregister.gov/documents/2024/08/21/2024-18279/supporting-the-head-start-workforce-and-consistent-quality-programming>

<sup>94</sup> <https://www.federalregister.gov/documents/2024/05/06/2024-09153/standards-for-the-growing-harvesting-packing-and-holding-of-produce-for-human-consumption-relating>

## **Housing and Urban Development (HUD)**

### ***Strengthening the Section 184 Indian Housing Loan Guarantee Program***<sup>95</sup>

HUD's policy is to consult with Indian Tribes early in the rulemaking process on matters that have Tribal implications. Accordingly, HUD began consulting with Indian Tribes in February 2018, and HUD held three additional in-person consultations to solicit Tribal feedback. A Tribal comment period on draft rulemaking materials was originally scheduled to run from April 4, 2019, to June 4, 2019, but it was extended to June 30, 2019, after Tribal leaders requested more time to review the draft proposed rule. During this time, HUD also held two in-person Tribal consultations and two national teleconferences to review the draft proposed rule.

In addition to the Tribal consultation sessions held before and during the drafting of the proposed rule, HUD conducted ten additional consultations during the public comment period. HUD held six regional consultation sessions and four national consultation sessions between December 2022 and March 2023.

## **Department of the Interior (DOI)**

### ***Permits for Incidental Take of Eagles and Eagle Nests***<sup>96</sup>

The agency conducted Tribal informational webinars on October 14 and 21, 2021; October 19 and November 2, 2022; and December 12, 2023.

### ***Self-Governance PROGRESS Act Regulations***<sup>97</sup>

The Department hosted three in-person consultation sessions on July 15, 17, and 19, and one virtual Tribal consultation session on July 22, on its proposed rule implementing the PROGRESS Act. Each session lasted approximately two hours. Following the consultation sessions, the Department accepted written comments until August 14, 2024. The Department received 492 individualized comments from 27 Tribes; 8 national and inter-Tribal organizations and Tribal entities; and national law firms representing multiple Tribes and Tribal consortia exercising Tribal self-governance for their respective communities.

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<sup>95</sup> <https://www.federalregister.gov/documents/2024/03/20/2024-05515/strengthening-the-section-184-indian-housing-loan-guarantee-program>

<sup>96</sup> <https://www.federalregister.gov/documents/2024/02/12/2024-02182/permits-for-incident-take-of-eagles-and-eagle-nests>

<sup>97</sup> <https://www.federalregister.gov/documents/2024/12/11/2024-28302/self-governance-progress-act-regulations>

## **Department of Justice (DOJ)**

### ***Third Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications***<sup>98</sup>

On June 13 and 27, 2024, DEA held virtual Tribal Consultations with numerous Tribal governments and organizations in order to elicit comment from interested Tribal parties regarding the prescribing of controlled medications via telemedicine and its impact on Tribal persons.

## **Department of Labor (DOL)**

### ***Workforce Innovation and Opportunity Act Title I Non-Core Programs Effectiveness in Serving Employers Performance Indicator***<sup>99</sup>

The Department held two events to consult with program grantees and representatives of Tribal institutions about their experiences. These two events consisted of a town hall meeting attended both in person and virtually and a formal consultation webinar. The town hall, entitled “Town Hall Discussion: Effectiveness in Serving Employers Performance Indicator,” occurred on September 21, 2021, at the 41st National Indian and Native American Employment and Training conference. The consultation webinar, entitled “Tribal Consultation for WIOA Effectiveness in Serving Employers Indicator Proposed Rulemaking,” occurred on October 19, 2021.

## **Department of Transportation (DOT)**

### ***Tribal Transportation Facility Bridge Program***<sup>100</sup>

Consultations with Tribal governments were held in 2022, including with the Inter Tribal Council of Arizona (ITCA) Virtual Meeting (March 10, 2022); Bureau of Indian Affairs (BIA) Alaska Provider's Conference Virtual Meeting (April 6, 2022); Tribal Transportation Program Coordinating Committee (TTPCC) Meeting in Albuquerque, New Mexico (May 17, 2022); Intertribal Transportation Association (ITA) Virtual Meeting (June 29, 2022); United South and Eastern Tribes (USET) Virtual Meeting (July 19, 2022); TTPCC Meeting in Lewiston, Idaho (August 9, 2022); National Transportation in Indian Country Conference (NTICC) Meeting in Louisville, Kentucky (August 25, 2022); BIA Alaska Provider's Conference in Anchorage, Alaska (November 30, 2022); and ITA Meeting in Las Vegas, Nevada, December 7, 2022.

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<sup>98</sup> <https://www.federalregister.gov/documents/2024/11/19/2024-27018/third-temporary-extension-of-covid-19-telemedicine-flexibilities-for-prescription-of-controlled>

<sup>99</sup> <https://www.federalregister.gov/documents/2024/02/23/2024-03279/workforce-innovation-and-opportunity-act-title-i-non-core-programs-effectiveness-in-serving>

<sup>100</sup> <https://www.federalregister.gov/documents/2024/07/12/2024-14933/tribal-transportation-facility-bridge-program>

The Federal Highway Administration held four more Tribal consultation meetings. A listening session was held virtually on April 4, 2023. Three in-person meetings were held: on April 20, 2023, at the Department of the Interior, National Indian Programs Training Center, Albuquerque, NM; on May 17, 2023, at the Great Northern Jerome Hill Theater, St. Paul, MN; and on May 18, 2023, at the Northwest Region Transportation Symposium, Northern Quest Resort and Casino, Airway Heights, WA.

## **Department of the Treasury (TREAS)**

### ***Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements***<sup>101</sup>

On September 25, 2023, the Treasury Department and the IRS held a Tribal consultation with Tribal leaders requesting assistance in addressing questions related to prevailing wage requirements.

### ***Short-Term, Limited-Duration Insurance and Independent, Noncoordinated Excepted Benefits Coverage***<sup>102</sup>

The Treasury Department and agencies with which it jointly regulates have engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners.

## **Office of Management and Budget (OMB)**

### ***Guidance for Federal Financial Assistance***<sup>103</sup>

OMB consulted with State and local officials that may be affected by Federal agencies' implementation of OMB's final guidance. On March 7, 2023, OMB held a two-hour Tribal consultation to solicit feedback from Tribal representatives.

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<sup>101</sup> <https://www.federalregister.gov/documents/2024/06/25/2024-13331/increased-amounts-of-credit-or-deduction-for-satisfying-certain-prevailing-wage-and-registered>

<sup>102</sup> <https://www.federalregister.gov/documents/2024/04/03/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage>

<sup>103</sup> <https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance>

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