

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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May 4, 2023

Hon. Shalanda Young
Director
Office of Management and Budget
1650 Pennsylvania Avenue NW
Washington, D.C. 20502

Hon. Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
262 Old Executive Office Building
Washington, D.C. 20503

Dear Director Young and Administrator Revesz,

The Committee on Oversight and Accountability is conducting oversight of the content, genesis and planned implementation of Executive Order 14094 on “Modernizing Regulatory Review”¹ and your proposed revision of Office of Management and Budget (OMB) Circular A-4 on “Regulatory Analysis.”² These actions dramatically threaten to alter federal regulatory development and drive Americans’ regulatory burdens beyond already record-breaking levels. We request a staff-level briefing to obtain additional information about these policies.

Even under pre-existing rules for federal regulatory development, the Biden Administration’s pace of regulation and escalating regulatory burdens has been breathtaking. In its first two years, the Administration surpassed by far the cumulative costs and paperwork burdens imposed by the Trump and Obama Administrations—imposing \$318.1 billion in new costs and 217.4 million new paperwork hours.³ This, of course, was on top of what already were estimated to be cumulative regulatory costs on American households and businesses of at least \$1.9 trillion per year before the Biden Administration even took office.⁴

The Biden Administration now proposes to open the regulatory floodgates even further through E.O. 14094 and major leftward revision of OMB Circular A-4. Executive Order 14094, for example, doubles the economic threshold at which review by the Office of Information and Regulatory Affairs (OIRA) is required for proposed new regulations. Previously, that threshold

¹ 88 Fed. Reg. 21,879 (April 11, 2023).

² 88 Fed. Reg. 20,915 (April 7, 2023).

³ Dan Goldbeck, *Week in Regulation: Proposed Rules Finish Off 2022 with a Bang*, American Action Forum (Jan. 3, 2023).

⁴ Clyde Wayne Crews, Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2021 Edition* at 5, COMPETITIVE ENTERPRISE INSTITUTE (June 30, 2021).

stood at \$100 million in annual effects on the economy.⁵ Now it is \$200 million. This will shield many high-cost regulations from OIRA cost-benefit scrutiny. With U.S. economic growth slowing and inflation continuing to eat into Americans' spending power,⁶ now is not the time to make it easier for high-cost regulations to evade rigorous economic review.

Executive Order 14094 also threatens to bias agency administrative records unfairly towards expanded regulation. The order charges agencies to expand "inclusive" public participation in rulemaking and promote "equitable and meaningful participation by a range of interested or affected parties[.]" This language echoes the Biden Administration's use of the terms "inclusivity" and "equity" as a mantle to pursue left-wing causes. We are concerned it is a smokescreen for promoting improper agency grassroots lobbying to guarantee pro-regulatory allies' public comments tilt agencies' administrative records towards such causes—just as in the infamous case of the Obama Administration's Waters of the United States Rule.⁷

Further, the proposed revision to OMB Circular A-4 threatens to open the cost-benefit-analysis process for new rules to massive pro-regulatory distortions. Accurate analysis of proposed rules' costs and benefits has been a guiding principle of both Republican and Democrat Administrations since President Reagan issued Executive Order 12291 in 1981.⁸ President Clinton's Executive Order 12866 consolidated bipartisan consensus on this process in a manner that has endured for decades.⁹ Notwithstanding E.O. 14094's lip service to E.O. 12866,¹⁰ OMB's proposed revisions to Circular A-4, if finalized, could ensure inflated and distorted calculations of benefits would routinely swamp calculations of projected regulatory costs.¹¹ This would open the doors to a vast expansion of economy-crushing regulations in the service of progressive causes.

We therefore request that you provide Committee staff a briefing on the genesis, purposes and planned implementation of Executive Order 14094 and your proposed revisions to Circular A-4 as soon as possible, but by no later than May 11, 2023. This briefing should include full information on whether and how our concerns will be taken into account in implementation of the Executive Order, deliberations on the proposed revisions to Circular A-4, and the performance of regulatory analysis by the Biden Administration while the proposed revisions to

⁵ Executive Order 12866 subsec. 3(f), 58 Fed. Reg. 51,735, 51,378 (Oct. 4, 1983).

⁶ See, e.g., Markets Today, *US Economic Growth Slowed Significantly at Start of 2023*, ABC NEWS (April 27, 2023).

⁷ See, e.g., Eric Lipton and Coral Davenport, *Critics Hear E.P.A.'s Voice in 'Public Comments'*, N.Y. TIMES (May 18, 2015).

⁸ 46 Fed. Reg. 13,193 (Feb. 19, 1981).

⁹ 58 Fed. Reg. 51,735.

¹⁰ 88 Fed. Reg. at 21,879.

¹¹ See *Circular A-4, To the Heads of Executive Agencies and Establishments, Subject: Regulatory Analysis (Draft for Public Review)* at 3, 9-10, 75-76 (April 6, 2023) ("analyses should include any important non-monetized and non-quantified effects;" "relevant effects" can "include those that occur entirely outside the United States;" "primary analysis" can focus "on the global effects of [a] regulation;" radical changes to use of discount rates, including by adoption of the 1928 Ramsey Model and reduction of the default discount rate to 1.7 percent for thirty-year projections of benefits).

Director Young, Administrator Revesz

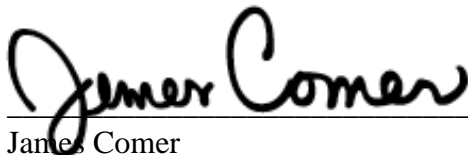
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Circular A-4 are pending. To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Accountability staff at (202) 225-5074.

The Committee on Oversight and Accountability has primary legislative jurisdiction over “[f]ederal paperwork reduction,” “[g]overnment management and accounting measures generally,” and the “[o]verall economy, efficiency, and management of government operations and activities,” pursuant to House Rule X. In addition, the Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Pat Fallon
Chairman
Subcommittee on Economic Growth,
Energy Policy, and Regulatory
Affairs

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Cori Bush, Ranking Member
Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs