



Regulatory Impact Analysis in the United States

Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

Ibero-American and Caribbean Network for Regulatory Cooperation
June 17, 2021

Any views expressed here are solely those of the presenter, and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President.

Interagency Coordination of Rulemaking: Office of Information and Regulatory Affairs

Role of the Office of Information and Regulatory Affairs

- OIRA was established by the Paperwork Reduction Act of 1980, partially in response to the explosion in regulation that occurred in the 1970s and earlier in the U.S.
- As part of the Office of Management and Budget, OIRA is a central oversight body that has special standing with the agencies.
- OIRA is the lead division of OMB for regulatory oversight and interagency review of “significant” regulations.
- OIRA also develops and oversees government-wide policies in the areas of information collection, information policy, privacy, and statistical and science policy.



What are good regulatory practices (GRPs)?

GRPs are internationally recognized processes and procedures that can be used to improve the quality and cost-effectiveness of domestic regulations.

GRPs address practices aimed at

- establishing administrative bodies and procedures that govern intragovernmental coordination of rulemaking activity;
- ***strengthening the analytical basis of regulations through robust analysis of their impacts***; and
- increasing regulatory transparency and accountability by promoting public participation to ensure that stakeholders can share their views, expertise, and data during the development of regulations.



Interagency Coordination of Rulemaking: Presidential Oversight

1970s

- President Ford: Required, for the first time, regulatory impact analysis (RIA) requirement for major regulations (over \$100 million in impact).
- President Carter: Established the Regulatory Analysis Review Group.

1980s

- President Reagan: Solidified regulatory oversight authority within the White House, issuing Executive Order 12291, which required OMB review and approval of rules.
- President George H.W. Bush: Continued the Reagan Executive Order.

1990s

- President Clinton: Issued Executive Order 12866, which focused OMB oversight on “significant” rules and increased the disclosure of contacts with outside parties.

2000s

- President George W. Bush: Maintained the Clinton Executive Order.
- President Obama: Issued Executive Order 13563, which affirms EO 12866 and outlines his regulatory strategy to support continued economic growth and job creation.

2010s

- President Trump: Issued Executive Order 13771 which outlines a regulatory budget and a requirement for identifying deregulatory rules before issuing regulatory rules, as allowed by law.

2020s

- President Biden: Issued a memorandum requiring OMB to produce a set of recommendations for improving and modernizing regulatory review.



Executive Order 12866: “Regulatory Planning and Review”

Issued by President Clinton in October 1993.

- Governs OIRA’s centralized, interagency review of draft regulations.

Establishes principles of regulation.

- Regulation must be consistent with law.
- Regulations must identify nature and significance of problem.
- Alternatives to address the problem must be identified and assessed.
- The costs and benefits of each alternative must be assessed.
- The alternative selected should maximize net benefits to society.

These principles guide OIRA’s review of “significant” regulations.



EO 12866: Scope and Important Requirements

OIRA reviews “Significant” Rules that

- create a serious inconsistency or otherwise interfere with another agency’s actions;
- materially alter the budgetary impact of Federal programs;
- raise novel legal or policy issues; and/or
- may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy,

Independent Regulatory Agencies are not covered.

- For example, Consumer Product Safety Commission, Federal Communications Commission, and the financial regulators.

EO 12866 requires economic analysis.

- OIRA examines the RIA and the regulation and makes suggestions to improve both the RIA and the rule’s cost-effectiveness, ensure adherence to the Executive Order’s principles, and consistency with the President’s priorities.
- Economically significant regulations require more analysis than smaller rules, and must comply with OMB Circular A-4, “Regulatory Analysis.”



What is a Regulatory Impact Analysis?

Elements of a Regulatory Impact Analysis

- Statement of need for the proposed rule that identifies the nature and significance of the problem (e.g., identification of the market failure).
- Examination of alternative approaches to addressing the problem.
- Analysis of the costs and benefits of each alternative.

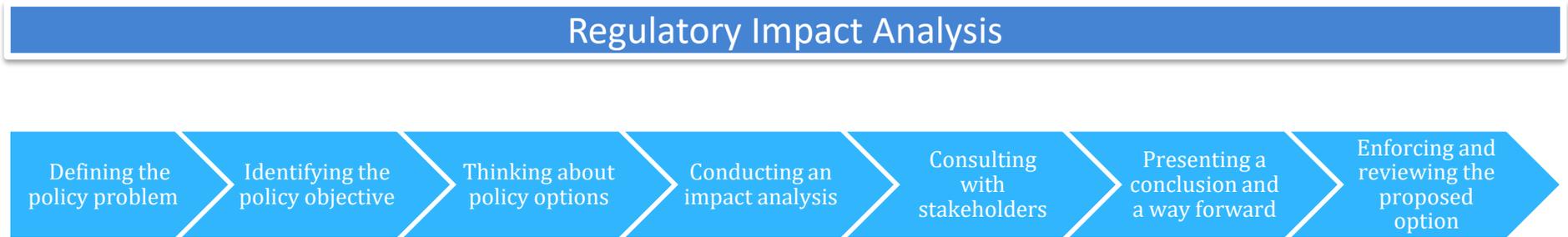
RIA is a flexible and adaptable tool that should always:

- Be proportional to the situation.
- Follow consistent guidance for complexity and level of analysis.

OMB Circular A-4: Guidelines for the Conduct of Regulatory Analysis (September 2003)



Steps - Regulatory Impact Analysis



World Bank, "Making it Work: 'RIA Light' for Developing Countries:
<http://regulatoryreform.com/wp-content/uploads/2015/02/World-Bank-RIALightNov2009.pdf>.



Presidential Memorandum: “Modernizing Regulatory Review”

Issued by President Biden on January 20, 2021.

- Directed OMB to begin a process with the goal of producing a set of recommendations for improving and modernizing regulatory review.

The Memorandum specifies that the recommendations should:

- identify ways to update OMB Circular A-4;
- propose procedures that “take into account the distributional consequences of regulations...to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities;”
- “Consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits;” and
- “Identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process, and determine an appropriate approach with respect to the review of guidance documents.”



References

- Executive Order 12866, Regulatory Planning and Review (September 30, 1993): <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>
- OMB Circular A-4, “Regulatory Analysis” (September 17, 2003): <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>
- Presidential Memorandum, Modernizing Regulatory Review (January 20, 2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>
- RegInfo.gov: <https://www.reginfo.gov/public/>

