

**Attorneys General of New York, Connecticut, District of Columbia, Illinois,
Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico,
Oregon, Rhode Island, Vermont, and Washington**

June 20, 2023

Submitted via www.regulations.gov

Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Re: Request for Comments on Proposed OMB Circular A-4, “Regulatory Analysis,” OMB-2022-0014; 88 Fed. Reg. 20,915 (Apr. 7, 2023)

To the Office of Management and Budget:

The undersigned State Attorneys General (Attorneys General) appreciate the opportunity to comment on proposed revisions by the Office of Management and Budget (OMB) to its guidance to federal agencies on how to evaluate the impacts of federal regulations, referred to as Circular A-4. Federal regulations fundamentally affect the health, safety, and productivity of our residents and businesses. Ensuring that federal agencies adequately consider the impacts of those regulations as part of the rulemaking process is therefore of significant importance to us.

These comments weigh in on several aspects of OMB’s proposed revisions to Circular A-4: (a) distributional analysis, (b) discount rates, (c) transboundary impacts, and (d) non-monetized impacts. As set forth in more detail below, the proposed revisions in these areas would help lead to more effective and equitable federal regulations that benefit our States.

Specifically, improving distributional analysis would better inform federal agencies about whether specific groups—such as overburdened or underserved communities—would experience disproportionate or cumulative impacts depending on the regulatory approach chosen. We also support OMB’s proposed updating of the discount rate to reflect current economic realities. Next, OMB’s proposed approach to considering the future impacts of regulations would promote intergenerational equity through better evaluation of whether regulatory choices would adequately address climate change harms to our children and grandchildren. Regarding consideration of transboundary effects, the proposed Circular A-4 would clarify that the effects of regulations on U.S. citizens and residents are not limited to effects within our borders. This clarification would help ensure that agencies comprehensively analyze regulatory impacts, including when they are seeking to address problems—such as air pollution—with cross-border impacts. Finally, we

support OMB's renewed emphasis on the importance of evaluating non-monetized effects in cost-benefit analysis. However, based on our experience with agencies' evaluation of non-monetized impacts in the climate change area, we request that OMB provide additional clarification in the revised Circular A-4 that would facilitate a more comprehensive evaluation of those impacts.

1. Background

It has been twenty years since OMB issued Circular A-4 to provide federal agencies with guidance on how to assess the impacts of regulations and regulatory alternatives. Circular A-4 was designed to implement Executive Order 12,866 (Sept. 30, 1993), which requires federal agencies to conduct regulatory analysis. This analysis is intended to enable regulators to determine whether regulation is appropriate, evaluate the benefits and costs of regulation, and identify the approach that maximizes social welfare. Regulatory analysis also helps the public, Congress, and the courts understand the effects of agency decisions.

President Biden, in his first day in office, issued a memorandum entitled "Modernizing Regulatory Review."¹ The President noted that the country was facing a variety of challenges, including "a massive global pandemic; a major economic downturn; systemic racial inequality; and the undeniable reality and accelerating threat of climate change." To ensure that regulations that seek to address these types of national priorities would result in "swift and effective Federal action," the memorandum directed OMB to produce a set of "concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations." President Biden specifically tasked OMB to consider revisions to Circular A-4 "to ensure that the review process promotes policies that reflect new developments in scientific and economic understanding, fully accounts for regulatory benefits that are difficult or impossible to quantify, and does not have harmful anti-regulatory or deregulatory effects." He further instructed OMB to "propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities."

¹ Available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

2. Proposed Revisions to Circular A-4

In response to President Biden’s memorandum, OMB issued proposed revisions to Circular A-4 in April 2023 for public comment. *See* 88 Fed. Reg. 20,915 (Apr. 7, 2023) (providing notice of the availability of the proposed revisions and related preamble). OMB’s proposed update to Circular A-4, when finalized, would supersede the current version. In an Executive Order issued on the same day, President Biden directed OMB to issue a final updated version by April 2024.²

We support updating Circular A-4 to reflect developments over the past 20 years in economics, science, and the law. This section sets forth our comments on four aspects of the proposed revisions: (a) distributional analysis, (b) discount rates, (c) transboundary impacts, and (d) non-monetized impacts. These comments apply only to the guidance contained in Circular A-4 for federal agency analysis of federal regulations, and do not reflect substantive recommendations for future state agency rulemaking.

a. Distributional Analysis

OMB acknowledged in the current version of Circular A-4 that the benefits and costs of regulations are not uniformly distributed across society or over time and therefore directed agencies to “provide a separate description of distributional effects,” defined as “the impact of a regulatory action across the population and economy, divided up in various ways (*e.g.*, income groups, race, sex, industrial sector, geography).”³ Furthermore, the current Circular A-4 explains that where distributional effects are important, agencies should, if possible, quantitatively describe the effects of various regulatory alternatives, “including the magnitude, likelihood, and severity of impacts on particular groups.”⁴ Despite this language in the current Circular A-4, “recent studies of agencies’ regulatory impact analyses have found that most contain little analysis of regulations’ effects on particular groups, aside from analysis of effects on small businesses.”⁵ Instead, agencies typically total up the aggregate costs and benefits of regulations and alternatives without considering how those costs and benefits are likely to be distributed across different groups and over time.

² Executive Order on Modernizing Regulatory Review (Apr. 6, 2023), § 3(b), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/06/executive-order-on-modernizing-regulatory-review/>.

³ Current A-4 at 14.

⁴ *Id.*

⁵ Preamble to Proposed A-4 at 11.

The proposed Circular A-4 seeks to address this deficiency. In it, OMB reiterates that regulations may have varying impacts on different segments of the population, and specifies that agencies “should not assume that aggregated data is applicable to particular groups, or that data for only one population group is applicable to other groups, without justification.”⁶ Similarly, the proposed Circular A-4 explains that “[t]he benefits and costs of a regulation may also be distributed unevenly over time.”⁷ By way of example, OMB notes in the proposed Circular A-4 that “lead remediation will have costs concentrated at the time of remediation, but benefits that persist over many decades.”⁸

Compared to the brief treatment of distributional analysis in the current Circular A-4, however, the proposed Circular A-4 provides more detailed guidance to assist agencies in estimating different effects of rules on individual groups. As an initial matter, OMB instructs agencies to consider “[r]easonably available methodologies and data, as well as input from experts and the public” to decide “whether production of a distributional analysis is practical, appropriate, permitted by law, and will produce relevant and useful information in a specific context.”⁹ Although we concur with this general statement, we strongly urge OMB to establish a presumption that agencies, such as EPA, will in fact incorporate distributional analysis in rulemakings that affect public health and the environment. This is particularly crucial considering the well-recognized fact that some communities have been disproportionately burdened with air, water, and waste pollution, as discussed in more detail below.

In addition, the proposed Circular A-4 directs agencies performing distributional analysis to analyze the proposed regulatory approach and other options under consideration. As OMB notes, distributional analysis can help agencies “to better identify alternative regulatory options or impacts that can be mitigated through other regulatory or non-regulatory decisions” and can “allow for more effective consideration of regulatory alternatives.”¹⁰ Further, OMB provides guidance on how to identify specific groups that may be impacted differently and how to weigh group-specific cost-benefit analyses, for instance, based on the group’s

⁶ Proposed A-4 at 61.

⁷ *Id.*

⁸ *Id.* This example particularly resonates with the Attorneys General, who, as discussed below, have worked to remedy public health harms due to lead paint contamination.

⁹ Proposed A-4 at 62.

¹⁰ *Id.*

marginal utility of income. Finally, the proposed Circular A-4 provides expanded guidance on how to perform those analyses and present the results.

We support the proposed changes to make distributional analysis more robust and widespread in federal agency rulemakings. As OMB notes, federal agencies should take into account, for example, the net benefits that different regulatory options would provide to one group versus another. We agree with OMB that “contextual considerations can be critical” and “what appears to be a policy with an inequitable distribution of net benefits when analyzed in isolation may in fact be remedying inequitable conditions that exist in the baseline.”¹¹ OMB correctly reasons that “because of differences in cumulative exposures and underlying health risk factors, reducing the emissions of harmful pollution may benefit certain exposed populations more than others.”¹²

We emphasize that certain of our communities have experienced and continue to experience disproportionate pollution burden and other underlying health risk factors. For example, lead paint contamination in our communities has resulted in individuals—in many instances, children—experiencing lead poisoning or elevated levels of lead in their blood. Just to take two recent examples from New York and the District of Columbia:

- In March 2023, the New York Attorney General filed suit against a Buffalo landlord for repeated and flagrant violations of dozens of properties in the City of Buffalo.¹³ At least 16 children living in housing owned by this landlord experienced lead poisoning. Buffalo suffers some of the nation’s highest rates of lead exposure, and children who live in communities of color are 12 times as likely as children who live in predominantly white neighborhoods to be diagnosed with elevated blood lead levels, making lead remediation a critical environmental justice issue.
- Similarly, in the District of Columbia, the Office of the Attorney General (OAG) has taken steps to address lead paint exposure through enforcing the District’s Lead Hazard Prevention and Elimination Act.¹⁴ OAG has also utilized the Consumer Protection Procedures Act to protect tenants from landlords who make misrepresentations to tenants on the habitability and maintenance of units, including as it relates to lead-based paint hazards.

¹¹ Proposed A-4 at 61-62.

¹² *Id.* at 61.

¹³ <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-buffalo-landlord-failing-properly-address-lead-based>.

¹⁴ *See* D.C. Code § 8-231.01 et seq.

Through these actions, OAG has been able to secure court orders requiring property owners to eliminate lead hazards at the property as well as recover monetary and injunctive relief for harmed tenants.¹⁵

Ensuring that federal agencies account for pollution burdens in evaluating different regulatory choices will help us address longstanding environmental and health inequities in our communities. In the above examples, the higher incidence of blood lead levels in these communities would constitute a critical contextual consideration in evaluating any proposed federal agency action that may mitigate or exacerbate that condition, such as in EPA’s development of a rule under the Safe Drinking Water Act to limit lead concentrations in drinking water through such actions as replacing lead service lines. People of color and low-income populations who face greater lead exposure generally also face disproportionate exposure to lead in drinking water because they are more likely to live in the approximately 6.3 to 9.3 million homes with lead service lines. This disparate exposure may be further exacerbated because these populations may not be able to afford to replace the privately-owned portions of lead service lines and may reside in rental housing where the landlord refuses to pay for such replacement.¹⁶ A distributional analysis that examines the potential impacts of the regulation—including the rate and prioritization of lead service line replacement—would be a valuable tool to inform EPA’s decision making regarding the best approach to adequately protect public health, including in underserved communities, from lead in drinking water.

b. Discount Rates

OMB advises federal agencies that costs and benefits of regulations that occur in the future should be “discounted” to their present value using economically-derived rates of time preferences. The current Circular A-4 directs agencies to use rates of 3 percent and 7 percent to discount regulatory costs and benefits.

The 3 percent rate, often referred to as the consumption discount rate, was calculated as the average before-tax real rate of return on long-term government debt between 1973 and 2002. The consumption discount rate has been used to

¹⁵ See, e.g., *AG Racine Announces OAG Wins in Five Lawsuits that Stand Up for Mistreated District Tenants & Advocate for Affordable, Safe Housing* (Dec. 13, 2021), <https://oag.dc.gov/release/ag-racine-announces-oag-wins-five-lawsuits-stand>; *AG Racine Announces Neglectful Landlord Must Clean Up Toxic Lead at Ward 4 Apartment Buildings* (Mar. 4, 2020), <https://oag.dc.gov/release/ag-racine-announces-neglectful-landlord-must-clean>; *AG Racine Sues Ward 7 Landlord for Exposing Tenants to Toxic Lead Paint* (July 30, 2019), <https://oag.dc.gov/release/ag-racine-sues-ward-7-landlord-exposing-tenants>.

¹⁶ See, e.g., Initial Opening Brief of State Petitioners, *Newburgh Clean Water Project, et al. v. EPA*, Case No. 21-1019 (D.C. Cir. Aug 8, 2022) (Document #1958332).

reflect the “social rate of time preference,” the rate at which society is willing to trade a unit of consumption in the present for a unit of consumption in the future.

The 7 percent rate, often referred to as the investment discount rate, was calculated as the average before-tax rate of return to private capital in the U.S. economy, and it has been used to approximate the opportunity cost of capital. The current Circular A-4 recommends using this (higher) investment discount rate in addition to a consumption discount rate because in certain circumstances, the regulation may displace or alter the use of capital in the private sector. Typically, the investment rate of interest is higher than the consumption rate of interest because businesses demand a rate of return that exceeds their borrowing costs, primarily due to uncertainty and taxes.¹⁷

Despite recommending the use of the 3 percent and 7 percent rates, the current Circular A-4 recognizes that using lower discount rates may be appropriate when accounting for costs and benefits that will accrue to future generations because lower rates mitigate the time preference between the well-being of current and future generations. A lower discount rate for costs and benefits accruing to future generations therefore would better protect their interest.¹⁸

In the preamble to the proposed Circular A-4, OMB explains that although it continues to adhere to the same basic discounting principles included in the current version, academic literature and financial markets have significantly evolved in the past 20 years, warranting an updating of its existing measures of discount rates. First, OMB cites the persistent decline in real interest rates over the past two decades; real interest rates have remained below 3 percent even as nominal rates have recently increased.¹⁹ Second, there has been a substantial evolution in the literature on the treatment of the long-term discount rate.²⁰ In light of these developments, OMB has proposed to update or revise its guidance on agencies’ use of consumption and investment discount rates, and on how agencies should consider intergenerational effects of regulations. Following a description of the proposed changes, we provide our comments on each aspect of this section of the proposal.

Consumption discount rate. OMB would change the default consumption discount rate from 3 percent, which was based on the average rate of return on 10-year Treasury notes from 1973-2002, to 1.7 percent, which reflects that same

¹⁷ Current A-4 at 33 and Proposed A-4 at 78.

¹⁸ Current A-4 at 35.

¹⁹ Preamble to Proposed A-4 at 18.

²⁰ *Id.*

average rate of return from 1993-2022 (both approaches are adjusted to account for the annual average change in consumer price index inflation).²¹

The Attorneys General support this change. OMB's proposed update would appropriately reflect current economic realities. The Council on Economic Advisers backed such an adjustment in 2017, when it found that the decline in Treasury rates in recent years supported discount rates of 2 percent or lower.²²

Investment discount rate. OMB proposes to eliminate the use of 7 percent as one of the two default rates for discounting costs and benefits of regulations. In the proposed Circular A-4, OMB explains that the uncertainty with respect to the effects of regulation on capital flows can be accounted for more accurately through the use of the shadow price of capital approach.²³ Under that approach, all the benefits and costs would be converted into consumption-equivalent values and then discounted using the social rate of time preference (which is a measure of society's willingness to postpone private consumption in order to consume later).²⁴

We support the revised approach to discounting. With respect to public health and environmental regulations, the use of a 7 percent discount rate often improperly gives short shrift to the benefits for future generations. For instance, in our comments on the Trump EPA's Affordable Clean Energy (ACE) rule regulating carbon pollution from power plants, we explained how a 7 percent discount rate overstated the opportunity cost of avoided compliance costs, overstated the uncertainty of future benefits, and erroneously biased the cost-benefit analysis toward current generations at the expense of future generations.²⁵ Similarly, the Interagency Working Group on the Social Cost of Greenhouse Gases ("IWG") recognizes that even a 3 percent discount rate is likely an overestimate of the appropriate discount rate.²⁶ During the George W. Bush Administration, EPA

²¹ Proposed A-4 at 76.

²² Council of Economic Advisers, *Issue Brief: Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate* (Jan. 2017), available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/201701_cea_discounting_issue_brief.pdf.

²³ Preamble to Proposed A-4 at 25.

²⁴ *Id.*

²⁵ Multistate Comments on Proposed ACE Rule (Oct. 31, 2018) at 128-29, EPA-HQ-OAR-2017-0355-24817.

²⁶ Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* (Feb. 2021) ("IWG TSD") at 17, available at <https://www.whitehouse.gov/wp->

recognized that there are reasons to consider even lower discount rates than the default rates of 3 percent and 7 percent in discounting the costs and benefits of policy that affect climate change:

First, changes in GHG emissions—both increases and reductions—are essentially long-run investments in changes in climate and the potential impacts from climate change. When considering climate change investments, they should be compared to similar alternative investments (via the discount rate). Investments in climate change are investments in infrastructure and technologies associated with mitigation; however, they yield returns in terms of avoided impacts over a period of one hundred years and longer. Furthermore, there is a potential for significant impacts from climate change, where the exact timing and magnitude of these impacts are unknown. These factors imply a highly uncertain investment environment that spans multiple generations.

When there are important benefits or costs that affect multiple generations of the population, EPA and OMB allow for low but positive discount rates (e.g., 0.5-3% noted by U.S. EPA, 1-3% by OMB).²⁷

Indeed, recent studies support using a long-term discount rate of “no higher than 2 percent.”²⁸ OMB’s proposed approach of not using 7 percent as one of the default discount rates is therefore well justified.

[content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf](https://www.epa.gov/technical-support-document-social-cost-of-carbon-methane-nitrous-oxide).

²⁷ 73 Fed. Reg. 44,354, 44,414 (July 30, 2008).

²⁸ See Tamma Carleton, et al., *Updating the United States Government’s Social Cost of Carbon*, Energy Policy Institute at the University of Chicago, Working Paper No. 2021-04, at 23 (Jan. 2021), available at https://epic.uchicago.edu/wp-content/uploads/2021/01/BFI_WP_202104_Final.pdf; accord Expert Report, *The Use of the Social Cost of Carbon in the Federal Proposal “Safer Affordable Fuel-Efficiency (SAFE) Vehicles Rule,”* (attached to comments of California Air Resources Board on EPA Docket No. EPA-HQ-OAR-2017-0355), Maximilian Auffhammer, Oct. 24, 2018, at 12; Council of Economic Advisers, *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate*, Issue Brief, at 3 (Jan. 2017), available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/201701_cea_discounting_issue_brief.pdf.

Intergenerational effects. In the proposed Circular A-4, OMB reaffirms its statement in the current version that “special ethical considerations arise when comparing benefits and costs across generations,” essentially because it may not be reasonable to assume that people who are not yet born would make the same (or similar) choices as those alive today.²⁹ Given this factor and because uncertainty about the discount rate increases over time, OMB concludes that it would be appropriate to apply a rate that declines over time.³⁰ Specifically, OMB proposes a series of small decreases in the discount rate of 1.7 percent starting in 2090, ending with a 1 percent rate in 2162.³¹ The Attorneys General agree with this approach. Ensuring the preservation of the value of the effects that occur in the more distant future is an important step forward in furthering intergenerational equity.

c. Transboundary Impacts

Under the current Circular A-4, federal agencies are directed to focus on the benefits and costs that accrue to citizens and residents of the United States. Agencies that choose to evaluate transboundary effects are instructed to report those effects separately.³² This limited guidance in the current Circular A-4 has led agencies sometimes to ignore significant impacts to U.S. citizens and residents, such as those from climate change. For example, during the Trump Administration, EPA took the position in the ACE rule that it was appropriate to consider climate change impacts only “within U.S. borders.”³³ As we explained in our comments to the proposed ACE rule, this constrained approach underestimated the social cost of carbon for that rulemaking by erroneously assuming that (1) any benefits that occur outside of U.S. borders from the prior rule (the Clean Power Plan) have no impact on the welfare of U.S. citizens or residents; and (2) climate change policy in other countries is made completely independently of U.S. climate change policy.³⁴

The proposed Circular A-4 would address some of these shortcomings. OMB initially explains that, although in many circumstances federal agencies should focus on the effects of the regulation on U.S. citizens and residents, effects on U.S.

²⁹ See Current A-4 at 35. As EPA recently noted, “[Frank] Ramsey (1928), for example, argued that it is ‘ethically indefensible’ to apply a positive pure rate of time preference to discount values across generations.” EPA-HQ-OAR-2021-0317-1549, *External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* (Sept. 2022), at 52.

³⁰ Proposed A-4 at 81.

³¹ Current A-4 at 30.

³² *Id.* at 15.

³³ EPA, Regulatory Impact Analysis for Proposed ACE Rule at 4-2.

³⁴ Multistate Comments on Proposed ACE Rule at 128-29.

citizens and residents are not limited to effects within the United States borders.³⁵ Therefore, “[w]hen feasible and appropriate, all such important effects should be included, regardless of whether they result directly from a regulation’s domestic applicability, or indirectly from a regulation’s impact on foreign entities.”³⁶ For example, agencies should consider the effects of a regulation on U.S. strategic interests, including the potential for including strategic reciprocity or other policy changes from actors abroad or effects on U.S. government assets located abroad. Such effects are particularly likely to occur when the regulation “bears on a global commons or a public good.”³⁷ Relevant effects would also include those that occur entirely outside the U.S. when they affect U.S. citizens and residents, such as effects experienced by citizens residing abroad.³⁸

The Attorneys General support this approach. As noted above, for regulations that address problems with transboundary effects, such as climate change, a domestic-only analysis is inadequate to understand the relevant costs and benefits of a regulation. As the National Academy of Sciences has concluded, “[c]limate damages to the United States cannot be accurately characterized without accounting for consequences outside U.S. borders.”³⁹

The consideration of global impacts is also fully within the authority of federal agencies. In *Zero Zone, Inc. v. Department of Energy*, the Seventh Circuit upheld the Department of Energy’s consideration of global—not just national—benefits in the context of energy efficiency, accepting DOE’s explanation that “climate change involves a global externality, meaning that carbon released in the United States affects the climate of the entire world.”⁴⁰ The court endorsed DOE’s treatment of carbon pollution as a “global externality,” and its conclusion that because “national energy conservation has global effects, . . . those global effects are an appropriate consideration when looking at national policy.” In fact, ignoring global climate change impacts would be arbitrary and capricious. In *California v. Bernhardt*, the Northern District of California held that the Bureau of Land Management (BLM) had erred in evaluating only the domestic costs of increases in greenhouse gas emissions from BLM’s repeal of regulations to reduce waste at

³⁵ Proposed A-4 at 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Proposed A-4 at 9.

³⁹ Nat’l Academy of Sciences, Engineering, & Medicine, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* (2017) (“*Valuing Climate Damages*”), at 53.

⁴⁰ 832 F.3d 654, 679 (7th Cir. 2016).

natural gas wells.⁴¹ There, the court noted that “focusing solely on domestic effects has been soundly rejected by economists as improper and unsupported by science.”⁴² The Court concluded that BLM could not “construct a model that confirms a preordained outcome while ignoring a model that reflects the best science available.”⁴³ In sum, OMB’s proposal that federal agencies consider transboundary impacts is well supported.

d. Non-Monetized Impacts

The Attorneys General also have an interest in a robust requirement that agencies meaningfully discuss non-monetized effects in their cost-benefit analyses. The current Circular A-4 already requires agencies to engage in a “careful evaluation of non-quantified benefits and costs.”⁴⁴ However, agencies—for example, those using the social cost of greenhouse gases to evaluate regulatory impacts—have failed to conduct the kind of careful analysis of non-monetized effects that is expected by the current Circular A-4.

There are several important climate change effects that agencies are not assessing. Among these are the effects of ocean acidification, the damages from the more frequent and more intense wildfires caused by climate change, and the impact of climate change on historically and culturally important resources.⁴⁵ As noted in a recent report on the social cost of carbon, the “omission [of wildfires] is particularly problematic” given the increasingly destructive and frequent occurrences of these events in our states.⁴⁶ The National Academy of Sciences has further highlighted the omission of impacts of climate change on culturally and historically significant resources, noting that climate change causes “loss of goods and services that are not traded in markets and so cannot be valued using market prices,” such as “loss of

⁴¹ 472 F. Supp. 3d 574, 608-14 (N.D. Cal. 2020).

⁴² *Id.* at 613.

⁴³ *Id.* at 614.

⁴⁴ Current A-4 at 26-27.

⁴⁵ See, e.g., Peter Howard, *Omitted Damages: What’s Missing from the Social Cost of Carbon* (March 13, 2014), available at [https://costofcarbon.org/files/Omitted Damages Whats Missing From the Social Cost of Carbon.pdf](https://costofcarbon.org/files/Omitted_Damages_Whats_Missing_From_the_Social_Cost_of_Carbon.pdf). The IWG has also noted that “none of the [Social Cost of Greenhouse Gases] models include damages associated with ocean acidification.” IWG TSD at 27.

⁴⁶ Peter Howard, *Flammable Planet: Wildfires and the Social Cost of Carbon* (2014), available at <https://costofcarbon.org/files/Flammable Planet Wildfires and Social Cost of Carbon.pdf>

cultural heritage, historical monuments, and favored landscapes.”⁴⁷ The Union of Concerned Scientists has also identified many historic sites and landmarks at risk from climate change, including Boston’s Faneuil Hall and the Statue of Liberty.⁴⁸ Failures to address the effects of climate change may also lead to ignoring or underestimating the unique effects that a proposed action may have on Tribes and Indigenous communities and on their cultural traditions.⁴⁹ Consequences of climate change such as the increased frequency and severity of wildfires, the impacts of ocean acidification, and the damage to culturally and historically significant resources undeniably fall within the category of “important nonmonetary values.” Thus, they should be included in a “discussion of non-quantified as well as quantified benefits and costs” whenever agencies undertake cost-benefit analyses for regulations that concern or would affect climate change.

Despite the well-established nature of these harms, agencies such as EPA have failed to follow Circular A-4’s directive to identify and discuss such important non-monetized effects of climate change. For example, although EPA’s recent proposed rule for light- and medium-duty vehicles recognizes that the estimates of the social cost of greenhouse gas possess several limitations, it does not discuss any of those limitations. Specifically, EPA’s recently released Proposed Rule: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles states:

In principle, [the social cost of greenhouse gases] includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.⁵⁰

EPA’s proposal acknowledges that the interim social cost of greenhouse gas estimates have limitations, including that the models used to produce them do not

⁴⁷ Nat’l Academy of Sciences, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*, at 152-53 (2017).

⁴⁸ Union of Concerned Scientists, *National Landmarks at Risk: How Rising Seas, Floods, and Wildfires Are Threatening the United States’ Most Cherished Historic Sites*, at 4–32, 36–40, 44 (2014).

⁴⁹ See e.g., Carson Viles, *Tribal Climate Change Profile: First Foods and Climate Change* (Dec. 2011) (“Because of the vital role that first foods play in the physical, mental, and spiritual health of native communities, impacts from climate change on first foods may negatively affect tribal culture and livelihood.”) available at http://www7.nau.edu/itep/main/tcc/docs/tribes/tribes_FirstFoodsCC.pdf.

⁵⁰ 88 Fed. Reg. at 29,371.

include all of the important physical, ecological, and economic impacts of climate change recognized in the climate-change literature.”⁵¹ However, the proposal does not include a single example of an impact that is not included in the social cost of greenhouse gas estimates. Similarly, EPA’s recent Supplemental Methane Proposal for oil and gas facilities does not discuss any omitted damages at all, and instead states without qualification, “[i]n principle, SC-CH₄ [the social cost of methane] includes the value of all climate change impacts.”⁵² Although EPA has occasionally in the past acknowledged in some rulemakings that the social cost of greenhouse gas emissions omits “important impacts like ocean acidification or potential tipping points in natural or managed ecosystems,”⁵³ such cursory references do not satisfy the current Circular A-4’s instruction to provide a meaningful discussion of non-quantified benefits and costs.

In the proposed Circular A-4, OMB reiterates that although monetized net benefits are an important guide, regulatory analyses “should include any important non-monetized and non-quantified effects.”⁵⁴ Crucially, OMB notes that “[w]hen important benefits and costs cannot be expressed in monetary units, relying on the monetized net benefits alone will be less useful, and can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.”⁵⁵

To both emphasize the general principle that non-monetized effects must be discussed, and to address the problem of inadequate evaluation of climate change effects, we request that OMB add language in the text of the revised Circular A-4 (1) directing agencies to identify and discuss important non-quantified effects of the regulation whenever an agency presents quantified costs or benefits, and (2) specifically citing the use of the social cost of greenhouse gas emissions as an instance in which important non-monetized impacts must be discussed.⁵⁶ It is important to ensure that a discussion of non-monetized impacts occurs even if that

⁵¹ *Id.* at 29,372.

⁵² Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 87 Fed. Reg. 74,702, 74,843 (Dec. 6, 2022).

⁵³ 80 Fed. Reg. at 64,662, 64,682 (Oct. 23, 2015) (final Clean Power Plan rule).

⁵⁴ Proposed A-4 at 3.

⁵⁵ *Id.* at 5.

⁵⁶ Alternatively, OMB could issue a separate directive to agencies instructing them to discuss important non-monetized impacts of climate change, such as the effects of more frequent and severe wildfires and impacts on culturally and historically significant resources, whenever they use the social cost of greenhouse gas estimates.

inclusion does not change which regulatory alternative is most net beneficial because it would be misleading to present a calculation of net benefits that does not provide a full evaluation of all relevant benefits and costs.

Finally, although we support OMB's suggestion that agencies include a summary table of non-monetized benefits that "could be meaningful in informing a policy choice,"⁵⁷ we also request that OMB make clear that such a table not take the place of a narrative discussion of the most important non-quantified effects. Having both a thumbnail sketch and a more fulsome discussion would facilitate better agency and public understanding of the climate change impacts of regulations.

Conclusion

As discussed above, OMB's proposed revisions to Circular A-4 could help lead to more effective and equitable federal regulations that benefit our States. We support OMB's adoption of those revisions and request that it also adopt clarifying language for non-monetized impacts.

Sincerely,

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⁵⁷ Proposed A-4 at 45.

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