June 20, 2023

Via federal website at http://www.regulations.gov

Administrator Richard L. Revesz
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
1600 Pennsylvania Ave, NW
Washington, DC 20500

Re: Financial Services Industry Comment on:
OMB-2022-0014 (Proposed OMB Circular A-4); and
OMB-2022-0011 (Guidance Implementing Section 2(e) of Executive Order of April 6, 2023)

Dear Administrator Revesz:

The undersigned associations (collectively, the ***"Associations"***)[1] represent a significant portion of the financial services industry, including banks, investment banks, broker-dealers, futures commission merchants, investment advisers, asset managers, and life insurers, engaged in the equity and fixed-income markets and offering and/or managing related products and services, and operating in the U.S. and global capital and derivatives markets. The Associations appreciate the opportunity to comment on proposed OMB Circular A-4 (the ***"Proposal"***)[2] and the Guidance Implementing Section 2(e) of Executive Order of April 6, 2023 (the ***"Guidance"***).[3]

As the Proposal notes, since 2003, OMB Circular A-4[4] has provided guidance to federal agencies on how to conduct regulatory cost-benefit analysis in connection with proposed federal rulemaking, as

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[1] American Bankers Association, American Council of Life Insurers, Futures Industry Association, Financial Services Institute, Insured Retirement Institute, International Swaps and Derivatives Association, Managed Funds Association, and Securities Industry and Financial Markets Association. Descriptions of the Associations are included in the attached Appendix.

[2] 88 FR 20915 (April 7, 2023), https://www.govinfo.gov/content/pkg/FR-2023-04-07/pdf/2023-07364.pdf.

[3] 88 FR 20916 ((April 7, 2023), https://www.govinfo.gov/content/pkg/FR-2023-04-07/pdf/2023-07360.pdf.

[4] OMB Circular A-4 (Sept. 17, 2003), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.

required by Section 6(a)(3)(C) of Executive Order 12866,[5] and various other related authorities. The Associations strongly support robust, rigorous, and thoughtful cost-benefit analysis in connection with federal rulemaking. Such analysis should appropriately weigh and balance the interests of, and the costs imposed and benefits conferred on, all affected constituents, including without limitation consumers, investors, issuers, investment managers, financial services firms, and other capital and derivatives markets participants. The ultimate goal of any such analysis, which we trust you share, is to ensure the utility, fairness, efficiency, and quality of federal regulations.

To that end, the Proposal and the Preamble[6] include several provisions that we generally support, as we believe they would enhance the quality of federal agency economic analysis (and thus, federal agency rulemaking), including the following:

- Federal agencies should evaluate proposed rules with consideration of other contemporaneous and near-term new rules and regulations.[7] In cases where there are several related rulemakings in process, federal agencies should perform economic analysis not only on each individual proposal, but also on the cumulative and interactive effects among the proposals collectively, including the cumulative compliance burden on regulatees (and the potential burdens on regulatees facing numerous, contemporaneous implementation requirements);

- Federal agencies should consider that "small[er] firms may find it more costly to comply with [new] regulations," potentially leading "small[er] firms to exit" and ultimately "resulting in reduced competition [and choice] in some markets."[8] Accordingly, federal agencies may wish to consider different requirements for different sized entities, or lengthier implementation periods for smaller firms, in each case where appropriate. That said, federal agencies should not impose "a heavier burden on one segment of a regulated industry" simply because actors in such segment may be able to "better afford the higher cost"; and

- Federal agencies should consider and address whether their analysis of a regulation's anticipated effects reveals that "what was previously assumed to be a need for regulation is *not* present." (emphasis added).[9] This provision appropriately recognizes that rigorous economic analysis, without prejudgment, will from time to time, and perhaps often, lead to the conclusion that a proposed new rule is unnecessary or ill-advised. We recommend that this provision be explicitly incorporated into the Proposal.

Notwithstanding the foregoing positive highlights, the Proposal and the Guidance also raise a number of significant concerns for our industry, including provisions that may potentially lower the bar for federal agencies to meet their regulatory cost-benefit obligation in connection with rulemaking,

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[5] Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf.

[6] Preamble: Proposed OMB Circular No. A-4, "Regulatory Analysis," https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4Preamble.pdf.

[7] Proposal at pp. 12 – 13.

[8] *Id.* at 24.

[9] Preamble at pp. 5 – 6.

and/or may provide avenues for federal agencies to justify their perceived need for rulemaking based on their own predeterminations, rather than on dispassionate, unbiased, economic analysis – an outcome that would undermine the intent of the original Circular A-4 and lead to biased regulations.

Our primary concerns with the Proposal include (i) its provisions that reduce the base discount rate from 7% to 1.7%, thereby essentially abandoning any reference to the opportunity cost of capital (at the relevant time with respect to the Proposal); and (ii) its emphasis on distributional analysis that applies distributional weights that are non-transparent, based upon questionable assumptions, and contrary to statute. We are also concerned that the Proposal would appear to allow a federal agency to perform a cost-effectiveness analysis, rather than a cost-benefit analysis, if the agency determines that it cannot quantify the benefits of a proposed regulation.[10] Although anticipated benefits may be difficult to quantify in certain cases, the Proposal provides an unnecessary end-run around this important step that would deprive commenters of the opportunity to suggest or recommend how to quantify such benefits.

Our concern with the Guidance is its establishment of different standards for the frequency with which trade associations versus other groups and individuals can meet with federal regulators, in what could be characterized as, and may constitute, viewpoint discrimination. Each of these provisions, if implemented, would likely undermine our shared goal of ensuring fair, efficient, and high-quality federal regulation.

Finally, we are also concerned that raising the threshold for economic significance from $100 million to $200 million under Executive Order 14094[11] will result in federal agencies performing materially less cost-benefit analyses and promulgating rules uninformed by what the Proposal itself calls "high quality and evidence-based regulatory analysis" under Circular A-4.

On June 20, 2023, the U.S. Chamber of Commerce, together with numerous other business-related organizations, submitted a letter to you detailing various concerns with the proposal, including the foregoing. Rather than reiterating the Chamber's detailed analysis and explanation, we hereby support and endorse each of the points raised in their letter, and we join them in urging you to carefully consider their analysis and adopt their recommendations.

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[10] Proposal at p. 4.

[11] Executive Order 14094, Modernizing Regulatory Review, 88 Fed. Reg. 21879 (April 11, 2023), https://www.govinfo.gov/content/pkg/FR-2023-04-11/pdf/2023-07760.pdf.

Thank you for the opportunity to comment. If you have any questions or would like to further discuss these issues, please contact Kevin Carroll, Deputy General Counsel, SIFMA at 202-962-7300.

Respectfully submitted,

American Bankers Association
American Council of Life Insurers
Financial Services Institute
Futures Industry Association
Insured Retirement Institute
International Swaps and Derivatives Association
Managed Funds Association
Securities Industry and Financial Markets Association

Attached: Appendix

Appendix – Descriptions of the Associations

1. **American Bankers Association (ABA)** is the voice of the nation's $23.6 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $19.2 trillion in deposits and extend $12.2 trillion in loans.

2. **American Council of Life Insurers (ACLI)** is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial well-being through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

3. **Financial Services Institute (FSI)** is a leading trade association comprised of independent financial advisor members and independent financial services firms. Through advocacy, education, and public awareness, FSI promotes creating a healthier, more business-friendly regulatory environment for the independent financial services industry so that its members can provide affordable, objective financial advice to hard-working Main Street Americans.

4. **Futures Industry Association (FIA)** is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in Brussels, London, Singapore, and Washington, D.C. FIA represents a wide array of market participants from around the world that depend on these markets including exchanges, clearinghouses, executing brokers, software vendors, specialized legal firms, proprietary trading firms, and commodity specialists.

5. **Insured Retirement Institute (IRI)** is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., including the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

6. **International Swaps and Derivatives Association (ISDA)** has worked since 1985 to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

7. **Managed Funds Association (MFA)**, based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 170 member firms, including traditional hedge funds, credit funds, and crossover funds, that collectively manage nearly $2.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

8. **Securities Industry and Financial Markets Association (SIFMA**) is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed-income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).