

May 5, 2003

Ms. Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB, Room 10202
725 17th Street, NW
Washington, DC 20503

RE: "OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements."

The NATIONAL ASSOCIATION OF REALTORS® is pleased to have the opportunity to comment on the "OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements", as published in the February 3 edition of the Federal Register. The NATIONAL ASSOCIATION OF REALTORS® (NAR) represents 880,000 members nationwide, involved in all aspects of commercial and residential real estate. Because of the economic and social impacts regulations have on our members, NAR has a keen interest in ensuring that the most rigorous regulatory decision-making process is conducted. Our comments will address several issues associated primarily with the regulatory analysis guidelines material presented in Appendix C of the OMB Draft Guidelines.

THE COSTS AND BENEFITS OF REGULATORY ACTIVITY

Experts with the National Federation of Independent Businesses calculate that regulations cost Americans about \$700 billion per year, or about \$8,000 per year for every household. Environmental, health and safety rules alone cost the country \$200 billion. This is roughly equivalent to what Americans pay yearly in individual income taxes.

This regulatory burden continues to grow without adequate evaluation and rigorous analysis. Even though past administrations have required agencies to conduct a variety of cost-benefit, data quality, record keeping, small business and other impact analyses, they have often been inconsistently applied, uncoordinated and difficult for the general public to understand. Many Americans remain unaware of the magnitude of this hidden cost and its effect on society. This regulatory burden takes different forms-such as increased costs for consumer goods and changes in lifestyle-which are difficult to trace to individual rules. Because regulatory burdens are dispersed and diverse, it is difficult to have a clear picture of regulations' many effects, both positive and negative.

As a result of the steady growth in regulations, REALTORS have raised concerns that agencies are less and less accountable to the public for the rules they write. Congress and every President since the mid-1970s have created mechanisms to improve rulemaking procedures and ensure that regulations have the intended effect and are cost-effective.

However, these mechanisms are currently not meeting their potential, in part because policymakers do not have adequate information on the impacts of proposed actions. One approach to resolve this current situation is embodied by the OMB regulatory analysis guidelines. These guidelines will require agencies to more clearly define and clarify the impact of their regulatory activity on the general public. The guidelines require: (1) a statement of the need for the proposed action; (2) an examination of alternative approaches; and (3) an evaluation of the benefits and costs of the proposed action and the main alternatives identified by the analysis.

NAR strongly supports OMB's general approach and believe these guidelines will facilitate greater coordination among agencies on regulatory actions, improved analytical rigor and consistency, increased federal agency transparency and accountability, and more accurate annual reporting of regulatory costs and benefits. The following comments reflect the issues in which REALTORS have the greatest concern and interest in regulatory activities and regulatory impact analyses.

ALTERNATIVE REGULATORY ACTIONS

NAR supports OMB's emphasis on the need for agencies to evaluate the impact of alternative regulatory actions. OMB devotes Section II of Appendix C to describing possible alternative actions that agencies could consider, such as different enforcement measures, compliance dates, requirements for different sized firms, different geographic regions, etc. NAR would recommend that the OMB require agencies to perform these alternative analyses. Too often, agencies conduct regulatory impact analyses only on their preferred regulatory action, rather than presenting the benefits and costs of all reasonable actions. Evaluating all the alternatives provides decision-makers with the information they need to identify the alternative that maximizes the social benefits of the regulatory action.

We also support OMB's guidance that agencies identify and consider the undesirable side effects and benefits associated with the proposed regulatory action. Many regulatory impact analyses conducted by regulatory agencies pay scant attention to the unintended consequences of proposed regulatory action. Finally, we support, OMB's directive to

agencies that they seek opinions and information early in the analytic process of those who will be directly affected by the regulation. The regulated community will have critical insights into how a specific regulation will impact their industry, and will also have important information on how to strengthen the regulatory impact analyses, such as a better understanding of the opportunity costs of a regulatory action, not just the compliance costs.

BENEFIT-COST AND COST-EFFECTIVENESS ANALYSIS

In the regulatory analysis guidelines, OMB states that agencies should conduct both benefit-cost analysis (BCA) and cost-effectiveness analysis (CEA) “whenever possible”. OMB believes that both analyses have elements that offer regulators different perspectives on the costs, benefits and trade-offs of a particular regulatory action. BCA addresses the question, in quantitative monetary form, of whether and to what degree the benefits of a proposed regulation exceed the costs of its implementation. CEA provides an assessment of regulatory effectiveness without having to quantify all the relevant benefits or costs. CEA is particularly helpful when comparing a set of regulatory actions that are aiming for the same outcome.

NAR supports an approach to regulatory analysis that encompasses the use of both BCA and CEA. NAR would encourage the use of both BCA and CEA wherever it is feasible to do so; and in cases where an agency failed to conduct both techniques, OMB should require documentation as to why it was not possible. This way, OMB and the public will have additional information to determine if the agency has appropriately implemented these guidelines. If the two types of analysis lead to different conclusions about the desirability of a proposed regulation, this is useful information that will stimulate policy makers to think more carefully about the outcome of a regulatory action.

DATA QUALITY AND PUBLIC ACCESS TO DATA

A critical element of the proposed regulatory impact analysis guidelines is the quality and quantity of data that is used to evaluate the regulatory action. Government agencies frequently have insufficient data, or data of insufficient quality, to properly comply with other regulatory related statutes, such as SBREFA. Poor data places the entire regulatory decision-making process in jeopardy, and follows the garbage in, garbage out (GIGO) axiom – if poor or insufficient data is used as the foundation for regulatory action, then how can the outcome be legitimate?

Fortunately, the OMB has put in place another set of guidelines that will ensure high quality information is available for evaluation, review and analysis during a rulemaking. These information quality guidelines maximize the quality, objectivity, utility and integrity of information used in regulatory deliberations. These guidelines also allow the public access to the information that was used as the basis for the regulatory action, and establishes a review and appeals process to withdraw information that may be of poor quality. NAR would encourage the OMB to place a greater emphasis on agencies to specify that they have complied with and implemented their own information quality procedures, pursuant to OMB's Information Quality Guidelines. However, agencies must be careful with how the information is used and disseminated. Some regulatory action may require the use of data that is proprietary in nature, but critical to the rulemaking. In these cases, privacy rules must be adhered to closely. Agencies should be provided some flexibility in how they are required to utilize and disseminate this information, and input from the regulated industry in this area is critical as well.

ANALYZING "UNCERTAINTY" IN REGULATORY ACTIONS

A reasonable characterization of uncertainty is an important component of any regulatory impact analysis. The OMB encourages agencies to conduct formal quantitative uncertainty analysis for rules having costs of \$1 billion or more. This emphasis on uncertainty analysis offers the opportunity to substantially improve the practice of regulatory impact analysis. A high-quality exercise in uncertainty analysis will provide valuable information on the probability of harm to human health and safety and aid decision-makers in determining whether to act now or seek additional information, and the costs to obtain that additional data. However, defining a specific threshold will create incentives for agencies to avoid conducting the analysis by estimating impacts below the specific threshold, just as it occurs presently with OMB's \$100 million threshold for economically significant regulations.

In the area of uncertainty analysis, NAR supports the Brookings Institute recommendation that OMB establish a tiered approach, and require that agencies scale the degree of uncertainty analysis to the level of impact of the proposed regulation. For example, for regulations having impacts of \$1 billion or more, a formal uncertainty analysis must be conducted, and applied to both benefits and costs. For regulations with lesser impacts on the economy, the level of detail and scope of the uncertainty analysis could be adjusted accordingly. Armed with information on the uncertainties on both the benefit and cost assessments, OMB can work with agencies to determine what additional information should be collected to improve and further inform agency decisions.

The NATIONAL ASSOCIATION OF REALTORS® appreciates the opportunity to comment on the “OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements”. If you have any further questions about these comments, please contact Russell Riggs, at 202-383-1259. We strongly support efforts by the OMB and the respective agencies to rigorously assess regulatory costs and benefits, and provide this information to the regulated community and the public. Holding federal agencies accountable for basing policy on sound regulatory analysis grounded in accepted scientific and economic principles is a critical first step.

Sincerely,

David Lereah
Senior Vice President & Chief Economist