



July 6, 2021

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Acting Director Shalanda Young
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government, Docket Number OMB-2021-0005

Dear Acting Director Young:

Thank you for the opportunity to comment on the Office of Management Budget's Request for Information on "Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government" (RFI), issued pursuant to Executive Order 13895 on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." Reorienting government institutions, policies, and practices to align with and advance equity and social justice are long overdue, and I applaud the efforts of this administration for taking it on.

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I am a Senior Policy Analyst with the Center for Progressive Reform (CPR), a non-profit research and advocacy organization that works to build thriving communities on a resilient planet. I have been studying the federal regulatory system for over 13 years, with a particular focus on the role of economic analysis and centralized review at the White House Office of Information and Regulatory Affairs (OIRA) in the regulatory decision-making process.

CPR's mission is to educate, collaborate, and advocate with the goal of driving public policy reform through rigorous and accessible legal analysis. CPR operates with a network of more than 60 leading scholars in various legal academic fields and a professional staff of policy analysts, communication experts, and others. We work together to advance the idea that government regulations are

key to social justice and planetary health. Our website is at www.progressivereform.org. Responses to the comments below may be sent to me at jgoodwin@progressivereform.org.

As explained below, these comments address questions raised under Areas 1 and 5 of the RFI and specifically relate to the critical issue of how to better incorporate equity and social justice in the regulatory decision-making process. Accordingly, I strongly encourage OMB to consider these comments in conjunction with the separate process regarding reforming the institution of White House centralized regulatory review, which President Joe Biden initiated through a January 20, 2021, memorandum entitled “Modernizing Regulatory Review.” That memo directs OMB in relevant part 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 As our comments make clear, these two efforts should be seen as complementary, and OMB should thus use this RFI as an opportunity to inform its work to bring progressive, social justice-oriented reforms to the institution of regulatory review.

Area 1: Equity Assessments and Strategies

I wholeheartedly agree with the premise of the RFI’s Area 1, which it casts in the following terms: “The work of advancing equity requires a holistic assessment of agency practices and policies. Some Federal agencies will need to implement new approaches to assess whether future proposed policies, budgets, regulations, grants, or programs will be effective in advancing equity. OMB welcomes submissions that provide resources, tools, and examples of how agencies might conduct effective equity assessments, with the goal of embedding equity throughout agency practices and policies.”

Specifically, I agree that the goal of developing *substantively* equitable policies requires as a necessary precondition *procedures* that are informed by and sensitive to equity concerns. Among such procedures, of course, one of the most important is the one used for assessing new agency policies while they are under development.

The predominant form of assessment used for new regulations has been a particular form of cost-benefit analysis that is grounded in the controversial theory of “welfare economics.”² Consistent with this theoretical grounding, this form of cost-benefit analysis, which is most prominently enshrined in Executive Order 12866, transforms

¹ Section 2(b)(ii).

² Amy Sinden, *Formality and Informality in Cost-Benefit Analysis*, 2015 UTAH L. REV. 93.

regulatory decision-making into a quixotic search for the “economically optimal” regulatory solution. In particular, performing this form of cost-benefit analysis demands a level of comprehensive knowledge that is impossible to achieve in reality, rendering its results unhelpful at best and fundamentally misleading worst. Its practice pretends that agencies can quantify and monetize *all* the costs and *all* the benefits of an *infinite* number of different regulatory solutions in order to identify that for which the net benefits are largest.³ In theory, the optimal regulatory solution is one that maximizes economic efficiency by perfectly balancing marginal costs and benefits.

Not only is the welfare economics version of cost-benefit analysis impossible to execute in practice, it also raises several intractable ethical and theoretical problems. Most relevant to the RFI, it serves to reinforce racism and racially discriminatory results in regulatory decision-making. The bottom line then is this: Agency efforts to perform equity assessments of their new regulations will be defeated as long as the prevailing form cost-benefit analysis continues to play such an influential role in agency decision-making.

If this administration is truly serious about promoting equitable policy, then it has no choice but to **abolish the use of cost-benefit analysis, as it is currently practiced, where not legally required, and to institute in its place a renewed commitment to permitting agencies to assess the “pros” and “cons” of pending regulations consistent with the standards provided for in the relevant authorizing the statute.**

This administration can and should go further to promote equity in policy design and implementation. Specifically, **it should consciously explore how to elevate and fully integrate the precautionary principle into regulatory decision-making.**

Finally, making regulatory assessments more consistent with equity goals requires more than just replacing cost-benefit analysis with the precautionary principle; it similarly requires better data about regulatory impacts that are relevant to understanding how regulations uniquely affect marginalized communities. Accordingly, I call on this administration to **lead a governmentwide commitment to advancing “information justice” — that is, to prioritize agency research agendas such that the “benefits” of new policy-relevant information is more fairly distributed to marginalized communities.**

I discuss these three interrelated recommendations in greater detail below.

Replacing Cost-Benefit Analysis with the Precautionary Principle

One of the prompt questions posed under Area I is as follows: “How can community engagement or feedback from underserved individuals with lived expertise on a given

³ Amy Sinden, *The Problem of Unquantified Benefits*, 49 ENVTL. L. 73 (2019).

policy problem be integrated meaningfully in an agency's use of equity assessment methods?" As explained below, I believe this goal can be better served if agencies abandon the welfare economics version of regulatory cost-benefit analysis while simultaneously elevating the role of the precautionary principle.

When it comes to institutional procedures that reinforce and perpetuate racial disparities in environmental harms, few are more influential than cost-benefit analysis. While cost-benefit analysis comes in many varieties, its predominant form is based on the theory of welfare economics. According to its defenders, the virtue of this version of cost-benefit analysis is that it promotes rational decision-making by insulating it from the messiness of resolving incommensurable subjective values, such as fairness and equity. But it is precisely this commitment to supposed "moral objectivity" that has left the practice vulnerable to producing racially disparate results.

This dynamic first comes into play at the very beginning of the cost-benefit analysis process, when the analytical baseline is defined for the purposes of comparing potential policy impacts. The problem arises when the status quo conditions that make up that baseline include aspects of racial injustice and inequality. Once racism is baked into the baseline, the analytical results may become distorted in ways that reinforce preexisting race-based inequities, which are often significant in most policymaking contexts.

The next step in the process is the actual evaluation of the rule's potential impacts relative to the pre-policy baseline. Here, too, the unique methodologies of cost-benefit analysis serve to promote racially discriminatory results in at least two ways. First, the mistaken desire for objectivity contributes to this rule by automatically assigning equal moral weight to competing interests affected by a given regulation. In the environmental policy context, for example, cost-benefit analysis treats the expenses that a corporation would incur through compliance costs as ethically commensurate with the compromised health, diminished quality of life, and premature deaths experienced by affected communities. According to this "logic," the U.S. Environmental Protection Agency (EPA) can take action to limit toxic air pollution only if the monetary "value" of preventing people of color in fenceline communities from getting sick is greater than the costs that polluting companies would incur to comply with the regulation. This mode of decision-making is offensive and absurd on its face.

Second, the practice of monetization, an essential element of cost-benefit analysis, provides an avenue for distorting regulatory decision-making in ways that reinforce racial injustice. Cost-benefit analysis demands that all regulatory impacts be compared in the common metric of dollars and cents. Regulatory costs may be more naturally expressed in these terms, but most types of regulatory benefits are not. Thus, agencies must employ a wide variety of controversial monetization techniques to convert such impacts — such as lives saved or ecosystems protected — into a dollars-and-cents valuation.

A good example of how monetization smuggles racial discrimination into cost-benefit analysis is the practice of ascribing a monetary value to preventing premature deaths. The most common technique economists use is to generate a “value of a statistical life” (VSL) derived from observed “wage premiums” for work that involves a slightly higher risk of death. Significantly, research shows that Black workers tend to receive smaller wage premiums than white workers, which implies that preventing premature deaths among Black people is worth less. Of course, Black workers don’t “value” their lives less than white workers, but structural racism in the labor market has left them with weaker bargaining power to demand higher wages. In light of these differences, economists have called to adjust the VSL to account for race in cost-benefit analyses. Fortunately, these calls have not yet been heeded since they would lead to weaker protections in regulations that primarily benefit people of color.

As above discussion illustrates, the prevailing form of cost-benefit analysis is intrinsically racist in that it introduces systemic racial bias into regulatory decision-making. Achieving the goal of anti-racism and substantive equity in regulatory policy is thus impossible as long as this practice continues to play an influential role in regulatory decision-making. Consequently, the Biden administration should abolish cost-benefit analysis as it is currently practiced, to the extent permitted by law.

In place of cost-benefit analysis, the Biden administration should take two steps. First, it should direct agencies to realign their regulatory analysis practices to comport with the context-specific methods specified in their authorizing statutes for considering costs and benefits. Second, it should direct agencies to reinvigorate the precautionary principle as a central part of their policy development and implementation.

As with cost-benefit analysis, the precautionary principle is not a monolithic concept but rather encapsulates a range of variations. For simplicity’s sake, legal scholars distinguish between “weak” and “strong” versions. Broadly speaking, the weak version holds that lack of evidence alone is not sufficient grounds for failing to take protective action to prevent serious harm to health or the environment. In other words, this version dictates how precaution should bear on the threshold decision of *whether* to take regulatory action in the face of uncertainty.

In contrast, the strong version generally calls for some form of robust regulatory action, even if costly, whenever a significant threat to health or the environment emerges. This version thus focuses more on *what kind* of regulatory action to take; what makes it strong is its default to robust responses against threats that meet a minimum threshold of significance and for which we lack complete certainty.

Notably, both versions have been enshrined in public protection laws relating to public health and safety and environmental safeguards stretching back nearly half a century.

Despite this strong legal footing, however, the precautionary principle's influence in regulatory decision-making has withered considerably. This is true even of the weak version, which is generally viewed as "uncontroversial." Significantly, the erosion of the precautionary principle has occurred contemporaneously with the rise in influence of the welfare economics version of regulatory cost-benefit analysis. Indeed, it is almost as if the rise of this form of cost-benefit analysis has, as if by hydraulic force, displaced the precautionary principle's influence in regulatory decision-making.

The root cause of this dynamic is that the prevailing form of cost-benefit analysis requires a high degree of certainty regarding potential risks contrary to the precepts of the precautionary principle (*i.e.*, if the risk of harm to be addressed by a regulation is too uncertain, then the value of the benefit of addressing that risk is calculated as \$0). The upshot is that as cost-benefit analysis has acquired a more influential role in the rulemaking process, it is being accompanied by a growing demand for certainty before regulatory action can be taken. What's more, on the rare occasion when action is taken, that same uncertainty is used to block all but the most modest protections.

This trend subverts the values of fairness and justice at the heart of the precautionary principle. Uncertainty is an inescapable feature of policymaking, given the practical limitations on human knowledge (limitations that cost-benefit analysis doesn't merely ignore, but in effect punishes). Someone must ultimately bear the costs of this uncertainty: Either the public (when uncertainty is used to justify blocking adequate protections) or the regulated business or entity (when uncertainty is used to justify stringent measures that turn out to exceed what is necessary to provide for the public interest). The precautionary principle seeks to give life to basic values of fairness and justice by shifting the costs of policy-related uncertainty to those who desire to undertake actions that present a risk of harm. This approach makes good moral sense given that these parties profit from the regulated actions and because the information advantages they enjoy regarding their actions better position them to resolve the uncertainties of potential harms.

As the precautionary principle continues to decay, the practical upshot is that the costs of uncertainty are shifting to populations that were meant to be protected by regulations. Risks these individuals face — to their health, well-being, and property — increasingly go unaddressed because agencies must dedicate more time and resources to gathering evidence to support regulatory action to address them. In perhaps its grimmest form, these evidence-gathering activities include "counting the bodies" of victims of premature death from particular environmental or public health threats. Due to structural causes of inequity, these bodies are — or will be — disproportionately Black or brown.

In light of the forgoing, it is clear that the precautionary principle is inextricably intertwined with promoting equity in regulatory policy. Consequently, the Biden administration should commit to revitalizing the role it plays in agencies' decision-

making. To put this commitment into action, OMB should lead an effort across executive agencies to identify legal authorities that support the application of the precautionary principle in regulatory decision-making. Further, consistent with these legal authorities, OMB should work with agencies to identify opportunities for incorporating either the weak or strong versions of the precautionary principle, as appropriate, into particular regulations while they are under development. As part of this process, relevant OMB and agency officials should develop strong legal and policy arguments in support of these substantive policy outcomes, including explicit references to the need to for promoting racial equity.

Information Justice

Another prompt question posed under Area I is, “How might agencies collect data and build evidence in appropriate and protected ways to reflect underserved individuals and communities and support greater attention to equity in future policymaking?” I commend OMB for recognizing the important role that agency research agendas often have on reinforcing racial inequity. As explained below, I encourage the Biden administration to think of this issue as “information justice.” More concretely, I call on the administration to ensure that federal research and data gathering efforts fully align with the goals of information justice.

Put succinctly, agencies are more likely to regulate risks they are aware of than those they aren’t. As Mustafa Santiago Ali, the former top environmental justice official at EPA, has noted, “Data drives policy, and the lack of data drives policy.” This dichotomy makes the issue of how information is gathered and used in the rulemaking process vitally important. The erosion of the precautionary principle, in which uncertainty has been weaponized to torpedo regulatory actions, amplifies the stakes in these fights.

As noted above, uncertainty is an inescapable feature of regulation, and its management is one of the central challenges for regulatory agencies. If the precautionary principle is ultimately about how to fairly allocate the costs of uncertainty through regulatory decision-making, then a related question involves how to fairly allocate the *benefits* of reducing uncertainty regarding risks that are addressed through regulation. I refer to this distributional concern as one of “information injustice.”

The general tendency of the federal regulatory apparatus has been to “choose ignorance” (to borrow a phrase from University of Texas Professor Wendy Wagner) when it comes to harms that disproportionately affect marginalized communities. In contrast, federal regulators are likely to place greater emphasis on understanding harms that affect elites. Because they reflect and reinforce broader power disparities in our society, these patterns of information injustice tend to produce racially inequitable results.

Once set, the pattern of information injustice self-perpetuates. That's because regulation begets new information, which is then used to support additional regulation. The classic example is when the EPA used the precautionary principle as a foothold to begin regulating the use of lead in gasoline despite uncertainty about the degree of harm it posed. Thanks to that initial regulation, the EPA learned a great deal about the link between leaded gas and public health harms through subsequent epidemiological research, which later supplied the evidence for a full ban. The far more typical case, however, is characterized by a catch-22 that preserves the status quo: without regulation, a particular environmental risk is unlikely to be researched, but without research, an environmental risk is unlikely to be regulated in the first place.

Several features of federal regulatory policy serve to promote information injustice and contribute to its influence throughout the regulation development process. For instance, the reliance on self-monitoring regimes for regulatory compliance and strong confidential business information protections for regulated entities defeats agency efforts to gather essential data about particular risks to public health, safety, the environment, or financial security. Similarly, chronic underinvestment in basic monitoring infrastructure, such as monitors used for tracking air pollution emissions, undermines agency efforts to understand the scope and nature of the risk their regulations are meant to address.

Many regulatory laws reinforce this pattern by adopting various kinds of "grandfathering" provisions to exempt risky actions or products that existed prior to the law's enactment. A classic example of this harmful approach was included in the original Toxic Substances Control Act (TSCA), which essentially conceded defeat on understanding the human health consequences of the tens of thousands of chemicals in use at the time the law was enacted. In contrast to new chemicals developed after the law went into effect, TSCA simply permitted these existing chemicals to continue to be used without any kind of systematic health or safety testing. If we were to learn anything about the harms these chemicals might pose, it would only be after the harm had been caused. This "guinea pig" approach to chemical safety is particularly burdensome on marginalized communities, which tend to face disproportionately high exposures to chemicals, both in their homes and workplaces.

On those rare occasions when information does exist regarding particular public hazards, significant obstacles often remain before it can actually be "used" by an agency to inform its regulatory decision-making. Most notably, stakeholders opposed to stringent regulations — including regulated industries and political conservatives — have created several institutional mechanisms within the rulemaking process for "manufacturing doubt" about the accuracy or quality of this information, with the ultimate aim of persuading agencies to disregard it altogether. For instance, the 2001 Data Quality Act establishes a process for industry and special interest groups to challenge information that agencies use to support their regulations.

To ensure its agencies operate consistent with information justice, the Biden administration should explore policy options for affirmatively prioritizing research targeted at understanding public health, safety, environmental, and financial security risks that disproportionately impact marginalized communities. As a first step, OMB should work with agencies to develop procedures and practices for engaging with members of such communities in a durable and meaningful way to understand their own policy priorities and the information barriers that might exist to address these priorities. These procedures and practices should aim to empower members of marginalized communities to help shape the research and data gathering agenda so that it targets the generation of policy-relevant information consistent with these communities' policy priorities.

OMB should explore existing opportunities for fully embedding information justice principles into agency practice. For instance, it should take appropriate steps to ensure that information justice is centered in agency actions taken in conjunction with the Foundations for Evidence-Based Policymaking Act of 2018, including agencies' development of Learning Agendas and Annual Evaluation Plans.

In addition, the Biden administration should take appropriate steps to rescind any existing unnecessary legal obstacles to elevating the principles of information justice. In particular, the administration officials should work with lawmakers to repeal the Data Quality Act in conjunction with the upcoming appropriations process.

Area 5: Stakeholder and Community Engagement

The introduction to Area 5 of the RFI explains its purpose in the following terms: "Section 8 of E.O. 13985 instructs agencies to expand their use of stakeholder and community engagement in carrying out the Order. OMB seeks specific approaches to stakeholder and community engagement with underserved communities that others have successfully used and that Federal agencies could adapt or apply." Consistent with this purpose, I agree that it is particularly important to strengthen public engagement in the rulemaking process by members of marginalized communities.

Currently, though, nearly every public participation opportunity in the rulemaking process is dominated by politically and economically powerful entities. That is in large part because these opportunities are designed to maximize engagement with those entities, while creating significant obstacles for individuals with less legal education and fewer financial resources. The unsurprising result is that viewpoints of powerful entities are overrepresented, while the public's voice — and especially the voices of members of marginalized communities — is drowned out.

One of the big challenges currently facing the U.S. regulatory system is the need to reform its public participation opportunities, both to reduce dominance by powerful entities and to elevate the voices of the public. This RFI, and implementation of Executive Order 13895 generally, offers a critical opportunity to initiate that reform process.

Below, I outline a specific reform recommendation the Biden administration should take in this regard. Specifically, **it calls on the Biden administration to implement what I call “People’s Regulatory Impact Analyses.”** These would offer a creative alternative to the economics-driven cost-benefit analyses that are currently used (and misused) to analyze the impacts of regulations while under development.

Creative Public Engagement: People’s Regulatory Impact Analyses

Two of the prompt questions under Area 5 are relevant to the issue of improving public engagement in the rulemaking process. The first asks: “What processes should agencies have in place to engage proactively with the underserved individuals and communities that will be most affected by agency programs, policies, rules, processes, or operations?” And the second asks: “What are some of the barriers or factors that challenge underserved communities’ interactions with Federal agencies and programs?” As explained below, the concept of People’s Regulatory Impact Analyses offers an effective response to both questions.

Generally, the rulemaking process offers significant potential for meaningful and durable engagement with members of the public, and especially members of disenfranchised communities. Indeed, public participation has long been recognized as one of the cornerstones of U.S. administrative law, and perhaps nothing better exemplifies its value than the notice-and-comment rulemaking process through which stakeholders can provide input on a proposed rule.

Yet, there remains an inherent tension in relevant administrative law doctrines that threatens to undermine the democratic potential of the rulemaking process. Specifically, in reviewing final rules, courts demand that agencies demonstrate that those rules are responsive to any substantive comments they receive. But courts generally limit this requirement to comments containing legal or technical information.

This approach to judicial supervision of agency rulemaking is just one of many forces that have helped transform what should be a democratic rulemaking process into a technocratic exercise. On the plus side, expertise-centered rulemaking has substantially improved regulatory quality. These gains, however, have come with some important unintended consequences.

For one, the growing hegemony of technocratic decision-making dehumanizes the rulemaking process, resulting in a process that is unmoored from authentic human

experiences — pain, hope, fear, loss — and from shared values like dignity, fairness, and justice. Worse still, overly technocratic rulemaking reinforces existing social inequalities by systematically excluding the voices of those who cannot “buy” the kind of specialized legal or technical expertise that holds sway with agency decision-makers. All too often, these voices belong to members of communities most impacted by the harms a regulation is meant to address. These individuals have acquired direct knowledge of these problems through their lived experience but rarely have the means to translate it into technocratic language.

In contrast, entities with sufficient resources to overcome administrative law’s doctrinal barriers to meaningful participation in the rulemaking process tend to be corporations (along with the trade associations, advocacy organizations, and think tanks they financially support) that are the focus of regulations. The practical result is that these doctrines end up privileging the perspective of the regulated community. This skewed perspective in turn risks producing decisions that shortchange the public interest, a result directly at odds with the goals of the authorizing statutes.

How can we make the voices of ordinary Americans heard in the rulemaking process in a way that does not punish them for lacking law degrees or PhDs? Can we imagine a rulemaking process that not only invites but *weighs* the lived experiences of Americans who are more comfortable with hip hop music, graphic novels, collages or street art than with legal briefs or dose-response curves? How can we capture their experiences about air pollution or predatory loans?

Art offers several unique advantages for re-democratizing the rulemaking process, especially those art forms that might be thought of as folk art, which are characterized by their authenticity, universal accessibility, and distinct cultural significance. Whether captured in the medium of visual arts, music, or literature, folk art is generally available for everyone’s use and is readily understandable to all. It has the capacity not only to convey valuable information, but also to establish meaningful connections between the artist and audience, even if they come from highly disparate backgrounds.

Among folk art forms, hip hop is especially important for some marginalized members of our society. For Black Americans, members of lower-income, urban communities, and others, hip hop has long provided a powerful means for social and political commentary. But why stop there? One can imagine someone from the upper Midwest writing a graphic novel depicting how agricultural pollution has tainted her community’s drinking water. Or to illustrate how rights to access justice in the courts have been curtailed, someone from suburban Oklahoma might create a collage comprising the dozens of forced arbitration agreements to which he is subject.

Incorporating hip hop and other forms of art into the rulemaking process could be as simple as agencies explicitly inviting submissions through their standard notices of

proposed rulemaking. Modern technology makes it relatively easy for agencies to accept submissions in a wide variety of audio and visual formats. Those materials could thus become part of the relevant rulemaking docket.

To help organize the process, agencies could hire artists to compile submissions into anthologies or even to create original artwork that draws upon public submissions. These materials could be discussed as part of the preamble to the final rule and, if applicable, would be available for judges to consider during judicial review. Precedent for these activities can be found in the New Deal-era Federal Writers' Project.

I recommend calling the rulemaking art anthologies "People's Regulatory Impact Analyses" because they would perform a function similar to that of the current regulatory impact analyses that executive branch agencies already conduct. According to their supporters, these existing analyses provide valuable information about a regulation's likely economic impacts and help guide an agency's use of discretion within the boundaries of its legal authority.

Note that welfare economics' version of cost-benefit analysis, described above, comprises a major component of these regulatory impact analyses as currently practiced. Accordingly, implementation of this recommendation would complement recommendations offered above addressing cost-benefit analysis and the precautionary principle.

In sum, administrative law experts have long recognized the essential role that public participation plays in the rulemaking process. People's Regulatory Impact Analyses promises to breathe new life into these principles without displacing the contributions of technocratic expertise in regulatory decision-making.

The Biden administration has several options for implementing this recommendation. The most obvious would be for it to pursue this recommendation in conjunction with its efforts to implement the "Modernizing Regulatory Review" memorandum. OMB is well-positioned to orchestrate agency initial implementation of this new approach to regulatory analysis. In particular, it could provide technical assistance to agencies as they learn to incorporate the new analyses into their existing rulemaking practices and to supervise agency implementation to ensure that new analyses are properly considered consistent with existing legal requirements.

Conclusion

In closing, I commend the Biden administration for undertaking the important and long-overdue challenge of building equity into the federal government's policy processes and institutions. As the above makes clear, the administration should give particular focus in this effort to the rulemaking process.

The above comments provide a series of recommendations for reforming the rulemaking process so that regulatory decision-making better accounts for and promotes racial equity and justice. These recommendations include the following:

- Formally bar the use of the welfare economics form of cost-benefit analysis to the extent permitted by law;
- Reinvigorate the role the precautionary principle plays in regulatory policy development and implementation;
- Align federal research and data gathering efforts with the principles and goals of information justice; and
- Implement People’s Regulatory Impact Analyses.

Through these reforms, the Biden administration will make significant progress on its goal of advancing equity through the regulatory system. As noted above, these reforms would also contribute to the stated goals of the administration’s “Modernizing Regulatory Review” memorandum, and thus should be pursued in conjunction with that effort as well.

I appreciate your attention to these comments. If you have any questions regarding the foregoing, or if I can be of further assistance in this effort, please do not hesitate to reach out to me.

Sincerely,

James Goodwin

Senior Policy Analyst

Center for Progressive Reform