



346

May 5, 2003

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

RE: Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations;
Comments on the OMB Draft Guidelines for the Conduct of Regulatory Analysis

Dear Ms. Hunt:

AARP appreciates this opportunity *to* comment on the Office of Management and Budget (OMB) Draft Guidelines for the Conduct of Regulatory Analysis. As a nonprofit, nonpartisan membership organization representing 35 million individuals aged 50 and over, AARP has a particular interest in the effects of OMB's guidelines on older Americans.

The 2003 draft report provides a statement of the costs and benefits of major federal regulations reviewed by OMB between October 1, 1992 and September 30, 2002. This section of the report makes reference to the "Clear Skies Initiative" in which the Environmental Protection Agency (EPA), at OMB's request, appears to have applied a 37 percent discount to the life value of persons over age 70. We will comment briefly on this age-based weighting of "life value."

The draft report also offers recommendations for regulatory reform. Among the reforms discussed are a requirement for federal agencies that issue rules "for which the primary benefits are improved public health and safety" to conduct cost-effectiveness analysis, cost-benefit analysis and risk assessment. The draft proposes specific methods for accomplishing such analyses. We will also comment on these guidelines for regulatory analysis, and the evaluative process undertaken by OMB when rules incorporating such analysis come to the agency for review.

Age-based Weighting of "Life Value"

We are deeply troubled by OMB's request for application of a 37 percent discount to the life value of adults aged 70 and over (while this discount is not explicitly mentioned in the report, the methodology is referred to in footnote 8 on page 5494). On the face of it, such an approach appears to be discriminatory; if similar discounts have been requested for or applied to other subpopulations, they have not as yet surfaced. The selection of a single age category for the discount suggests an uninformed bias; for age to make sense in this context, differences across the entire age distribution in expected remaining years of life should be accounted for -- not just the distinction between under and over age 70.

It should be noted that there are many other individual characteristics that are correlated with expected lifespan. Gender is one of these. It is not clear why, if adjustments are made for one particular age category, they are not also made for gender. There is also geographic variation in the age distribution of the population, which might have implications for where a rule might most beneficially be implemented.

Moreover, the discount lacks a sound basis in science. The research from which it derives has been characterized by its author as being "woefully out-of-date," and not applicable to the United States.¹ Use of this discount in cost-benefit calculations raises significant concerns regarding its ultimate impact not only on older persons, but on the rest of the population as well. It is not clear that this discount methodology has been applied outside of the environmental area, or that OMB intends to continue to require its use at all. However, because of its potential to influence determination of costs and benefits in many areas of public health and safety, this methodology should be thoroughly reevaluated.

Cost- Benefit and Cost- Effectiveness Analysis

Attempts to quantify the benefits of government activities are laudable, in that they help to inform individual preferences and the societal decision-making process. And strides have been made in devising concepts and methods for measuring such benefits. However, no credible case has been made for assuming the primacy of any one measurement system over another for assessing outcomes between or programs that serve different groups -- such as older Americans,

The draft report gives prominence to cost-benefit analysis in determining regulatory impact without adequately accounting for the weighting of non-quantifiable benefits. Because this analytical tool often involves placing monetary values on attributes of human well-being for which no market prices exist, its use is often complicated, expensive, controversial and highly inequitable. Rather than legitimate quantification,

¹ Seth Borensrein. *Elderly less valuable in cost-benefit analysis*. The MiamiHerald.com. December 18, 2002. On the web at www.miami.com/miamiamiherald/4768787.

cost-benefit analysis may instead involve many value-laden choices. And, when the benefits of a given action are difficult or impossible to quantify, the cost-benefit analysis may be skewed toward the cost side of the analysis – effectively, in favor of inaction.

Cost-effectiveness analysis does not monetize benefits. Rather, it looks at the ratio of costs to units of benefits (e.g., number of lives saved). The objective is not to identify the least expensive policy, but to select the policy that achieves the specified goal with the smallest loss in social well-being. Although this approach avoids some of the problems associated with the monetization of benefits, it too can lead to skewed and timid decision-making. For example, a cost-effectiveness analysis that look at costs relative to the number of lives saved would miss other significant measures, such as non-fatal disease or injury, and equity considerations.

One measure that is often recommended conceptually for some purposes is "quality-adjusted life years". Using such measures in the area of pollution, one might find that older persons on average suffer more negative consequences from air pollution in terms of either quality of each life year OR reduction of number of life years remaining (given discounting). If these assessments were accurate, then it is not entirely clear in what direction and in what magnitude a complete adjustment for older persons would come out on net. In any event, we re-emphasize that the appropriate outcome measure for an evaluation depends on the project being analyzed, and the nature of the alternatives that are being considered in the budgetary and decision-making process.

Under previous guidelines, agencies were permitted to use cost-effectiveness analysis in place of "net benefits" analysis if they had difficulty monetizing benefits. The new proposed guidance would require both types of analysis for all major health and safety rules. In addition, OMB's proposed guidance would require agencies to apply the concept of discounting to their cost-effectiveness analysis. The likely result is that it will appear less cost-effective to save lives in the future as opposed to in the near term. This could mean fewer protections to prevent cancer or other diseases of old age that have long latency periods.

OMB Evaluation Process

Regulatory impact assessment has significant implications for public policy implementation, and is likely to grow in importance as a tool for expressing policy. But equally important is OMB's response to these assessments – in other words, what it does with the information provided by federal agencies. We believe it is critical that the public better understand OMB's methodological approach to the use of such information, and when choices have to be made, the criteria for how that will happen.

Recommendations

To address the concerns raised in this comment, AARP urges OMB to incorporate a number of elements in its final 2003 Report to Congress. OMB should:

- Clearly state the ways in which the various types of analysis impact older Americans, provide justifications, and explain how discount values on the lives of older Americans are derived;
- Clearly state its decision criteria for determining which type of analysis will prevail over another. Weighting of different approaches should be clarified;
- Avoid basing decisions solely on the quantifiable components of a cost-benefit analysis; the report should emphasize that federal agencies should provide adequate justification for the rule when submitting their analyses;
- Develop and publish guidelines for how non-quantifiable elements in cost-benefit analysis will be evaluated;
- Develop a clear policy position on the relationship between intergenerational effects and discount rate policies; and
- Develop and publish guidelines on how decision-making standards will take regulatory goals into consideration.

OMB should also recognize that meeting the analytical requirements set forth in the draft report will require significant agency resources, and may delay the promulgation of important regulations. Should the draft guidelines be adopted as proposed, they are likely to present onerous administrative burdens on all federal agencies with responsibility for the promulgation of health- and safety-related regulations. These administrative burdens represent a cost in themselves that OMB should consider when reviewing budget requests.

In conclusion, AARP believes that regulatory impact assessment has potentially far-reaching effects on older adults and all Americans. We urge OMB to reject arbitrary age-based cost-benefit analysis. In addition, OMB should ensure greater transparency regarding its own evaluation of proposed rules. We ask that in any final report, OMB address the specific recommendations listed above. If you have any questions or we can be of further assistance, please feel free to call me or Jo Reed of our Federal Affairs staff at (202) 434-3800.

Sincerely,



David Certner
Director
Federal Affairs