



# Regulatory analysis is too important to be left to the economists

BY SIDNEY SHAPIRO AND MELISSA LUTTRELL, OPINION CONTRIBUTOR — 08/16/21 05:00 PM EDT  
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The surging COVID-19 delta variant is sending [thousands of people](#) to the hospital, killing others, and straining several states' [hospital systems](#) to their breaking point. The climate crisis is hurting people, communities and countries as we write this piece, with [apocalyptic wildfires](#), [crippling droughts](#) and [ra](#) in [floodwaters](#). [Systemic racism](#) continues unabated, leading to vast economic and environmental injustices. It's beyond time for urgent action, but to get there, the federal government must reform the opaque, biased method it uses to evaluate our nation's public health, economic and environmental protections.

The day President Joe Biden took office, [he ordered executive branch agencies](#) to evaluate and reform the regulatory review process to "ensure swift and effective Federal action" to address the urgent problems we currently face. The administration is unlikely to live up to this goal unless the White House addresses the hyper-technical form of cost-benefit analysis that is the centerpiece of this process.

The ongoing national reckoning with racism has prompted widespread scrutiny of many institutions, including the White House's centralized regulatory review process led by the Office of Information and Regulatory Affairs (OIRA). The relentless focus on cost-benefit analysis in regulatory review [produces racially biased outcomes in many areas of regulation](#) because it ignores or dramatically undervalues equity concerns — even when the law at issue is meant to reduce disparate impacts — and it promotes weak health, safety and environmental standards, a bias that helps maintain a status quo where racial disparities abound.

There are proposals to modify cost-benefit analysis by using so-called "distributional weights" to reflect the value of improved equity that typically results from regulation. [This change is needed](#), but distributive weights alone are not enough to address the multitude of disparities promoted by the regulatory review apparatus Biden inherited. Moreover, the use of such weights can easily be dismissed by a future administration hostile to the regulatory process and protecting marginalized communities.

More urgently, the White House should immediately take three steps needed to speed up the regulatory process and "promote public health

and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations," as the president has ordered.

First, the regulatory analysis should focus on both economic and non-economic considerations, as President Bill Clinton intended but did not achieve. Regulatory analysis should assist decision-makers in analyzing the scientific and policy issues that are presented by the statute being implemented. Only one of our 20 major protective statutes — the Pipeline Safety Act — requires a regulation to pass a cost-benefit test to be adopted.

Second, while cost-benefit analysis has a role to play in regulatory review, the goal should no longer be to ensure an agency has complied with the massive set of often incoherent methodological instructions that OIRA has issued. Instead, OIRA economists should determine whether regulatory estimates indicate that something has gone awry in an agency's regulatory assessment. If not, OIRA should quickly approve a proposed rule and send it back to an agency for finalization.

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Third, OIRA should add career staffers whose expertise lies in racial justice, law, public health, environmental policy and the other priorities Biden's memo seeks to bring to bear in regulatory analysis. Such analysis requires the consideration and evaluation of multiple perspectives if it is to effectively predict regulatory impacts. It is past time to acknowledge the obvious: Regulatory analysis is a "craft," not a science or mathematical formula.

Addressing the pandemic, structural racism, climate change and other pressing national issues is too important to be left to the economists. If Biden intends to reform regulatory assessment and better protect people and the planet, he must put in place a review process that recognizes this insight.

*Sidney Shapiro is the Frank U. Fletcher chair in law at Wake Forest University and the vice president of the Center for Progressive Reform. Melissa Luttrell is an assistant professor of law at The University of Tulsa.*

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