

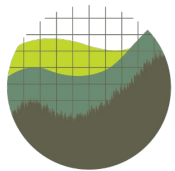
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# The Role of Economics in Federal Regulatory Advocacy

April 18, 2024

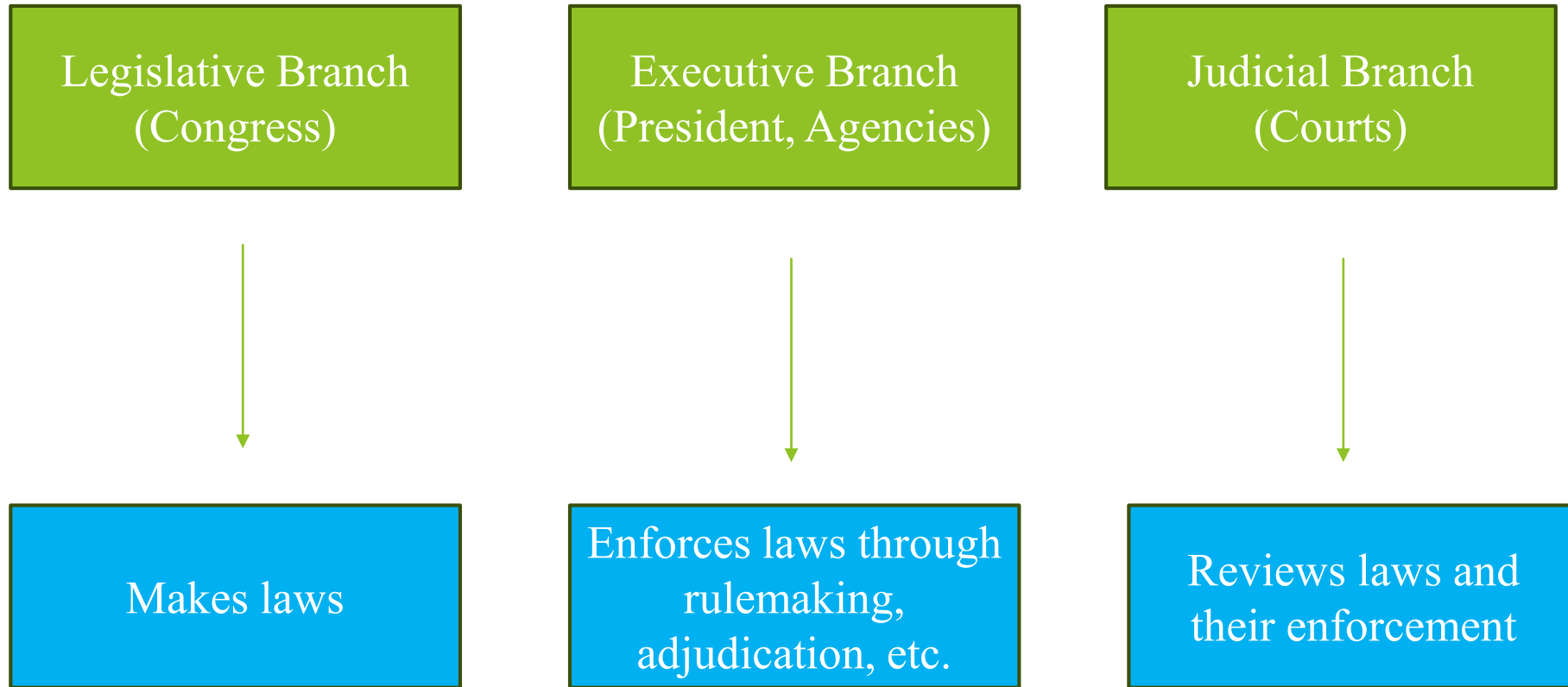
# Overview of the Regulatory Process



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# Three Branches of U.S. Government



# Examples of Federal Agencies

- ▶ Health and Environment
  - ▶ Environmental Protection Agency (EPA)
  - ▶ Occupational Safety and Health Administration (OSHA)
  - ▶ Department of Health and Human Services (HHS)
- ▶ Energy and Transportation
  - ▶ Department of Energy (DOE)
  - ▶ National Highway Traffic Safety Administration (NHTSA)
  - ▶ Bureau of Land Mgmt. (BLM) / Bureau of Ocean Energy Mgmt. (BOEM)
- ▶ Finance and Consumer Protection
  - ▶ Consumer Financial Protection Bureau (CFPB)
  - ▶ Federal Trade Commission (FTC)
  - ▶ Securities and Exchange Commission (SEC)

# Legal Authority

- ▶ Federal agencies operate according to **Congressional statutes**.
- ▶ Many (but not all) statutes are fairly broad and open-ended, granting **substantial discretion** to federal agencies.
  - ▶ *E.g.* Under the Clean Air Act, EPA can set performance standards to reduce pollution from power sources that reflect the “best system of emission reduction.”
- ▶ But the **statute always contains limits** on the agency’s authority.
  - ▶ EPA’s “best system of emission reduction” applies only to stationary sources like power plants, not the entire economy.
- ▶ Courts, which review agency rules, read **implicit limits** into statutes.
  - ▶ In 2022, the Supreme Court ruled that the Act’s “best system of emission reduction” must be based on controls that cause sources to operate more cleanly—not on shifting generation from dirtier to cleaner sources.

# Federal Rulemaking

- ▶ Rulemaking requires an **extensive process**.

## 1: Information Gathering

- Request for Information / Advance Notice of Proposed Rulemaking
- Workshops

*Months or years*

## 2: Proposed Rule

- Draft text and analyses
- Public comment period (usually around 60 days)

## 3: Final Rule

- Respond to all comments
- Can amend proposed rule but must be a logical outgrowth of it

*Months (normally)*

# Use of Technical and Economic Analysis

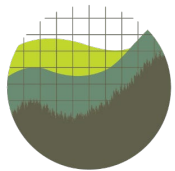
- ▶ Regulatory Impact Analysis: Assessment of Benefits and Costs
  - ▶ Regulations are often justified based on their net benefits (Kaldor-Hicks criterion)
  - ▶ Executive guidance instructs agencies normally to maximize net benefits.
- ▶ Environmental Impact Assessment
  - ▶ Typically includes some environmental justice analysis
- ▶ Technical Support Documents (*e.g.* scientific findings)

# Judicial Review

- ▶ After a rule is finalized, affected parties can challenge it in court.
- ▶ A court may strike down the rule if:
  - ▶ The rule is inconsistent with the applicable statutes
  - ▶ The rule's economic, scientific, or policy justifications are “arbitrary and capricious” (relatively deferential standard, but not toothless)
  - ▶ The agency did not adequately respond to substantive comments submitted during the public comment period



# Opportunities and Needs for Economic Research and Analysis



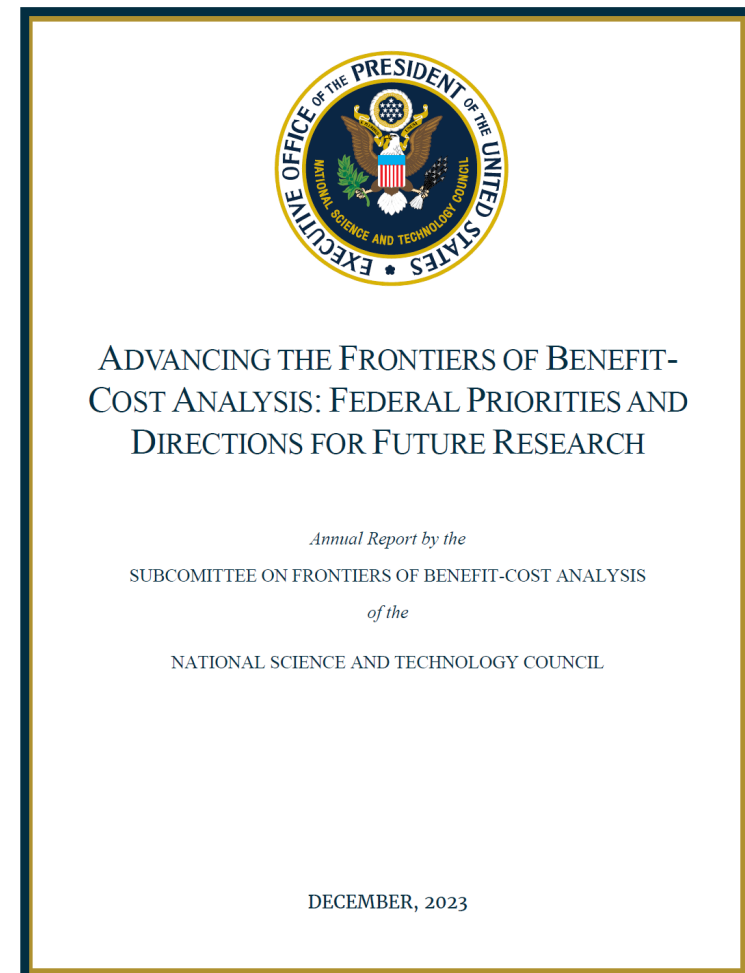
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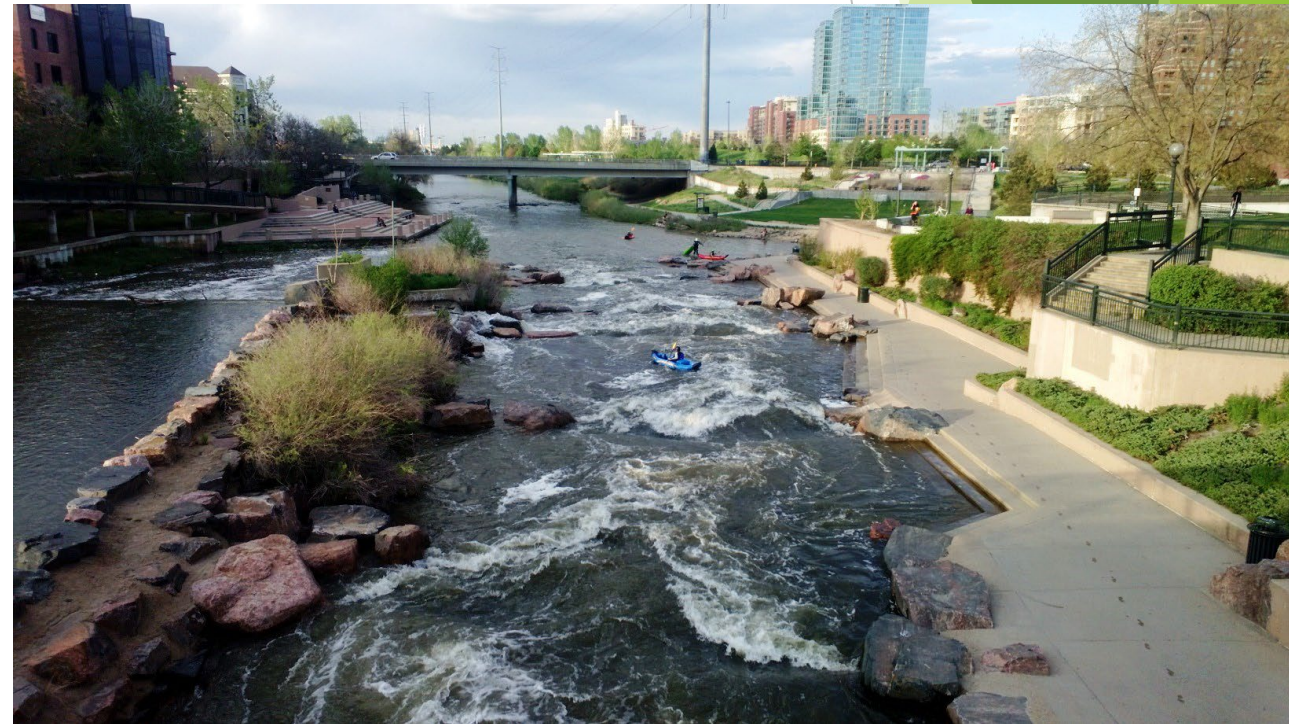
# Externalities and Regulatory Impacts: Frontiers of Benefit-Cost Analysis

- ▶ In Dec. 2023, the White House published a report, “Advancing the Frontiers of Benefit-Cost Analysis,” that identified key research priorities and called for assistance from outside experts:  
<https://www.whitehouse.gov/wp-content/uploads/2023/12/FINAL-SFBCA-Annual-Report-2023.pdf>
- ▶ Focused on five\* key research priorities
  - ▶ Non-fatal health effects
  - ▶ Ecosystem services
  - ▶ Wildfire and extreme weather events
  - ▶ Information and transparency
  - ▶ Public benefits programs
  - ▶ \*Plus distribution and risk as cross-cutting themes



# Frontiers of Benefit-Cost Analysis (cont'd)

- ▶ Non-Fatal Health Effects
  - ▶ E.g. Non-cancer diseases, birth defects, mental health
  - ▶ Distribution of baseline health risks and exposure data across subpopulations
  - ▶ Challenges include accounting for latency and social determinants
- ▶ Ecosystem Services
  - ▶ E.g. Recreational and subsistence use, climate mitigation
  - ▶ Challenges include linking ecosystem conditions to social outcomes
  - ▶ *See White House's Ecosystem Services Guidance (2024)*



# Frontiers of Benefit-Cost Analysis (cont'd)

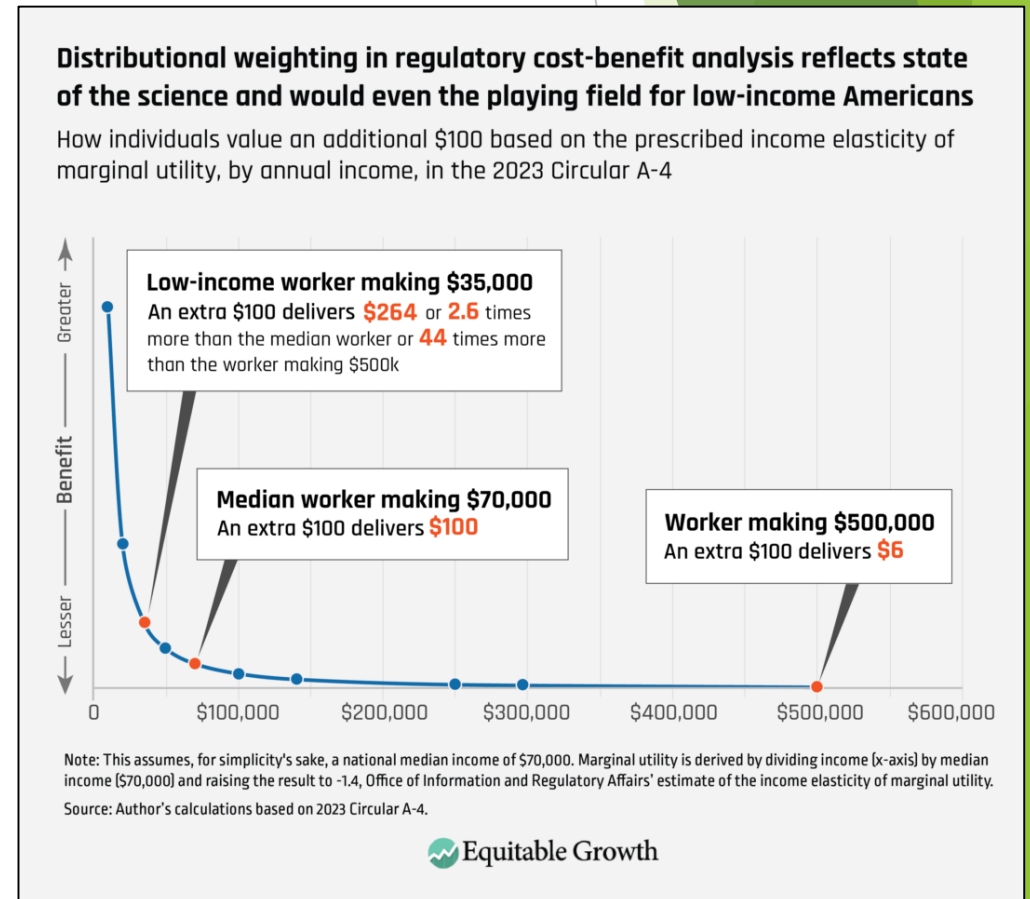
- ▶ Wildfires and Extreme Weather Events
  - ▶ Benefits and costs of disaster relief, risk reduction, and resilience
  - ▶ Challenges include identifying 1) risk reductions, and 2) health impacts from extreme events
- ▶ Information and Transparency Effects
  - ▶ Effects of disclosure on choice: Such as consumer information, contract transparency, and information on public risks
  - ▶ Data gaps on consumer response to information disclosure
- ▶ Effects of Public Benefits Programs
  - ▶ Long-term benefits to program recipients and government cost savings
  - ▶ Data gaps include 1) linking benefits to outcomes, and 2) burdens of accessing programs.





# Distributional Analysis

- ▶ Distributional analysis looks at how regulatory benefits and costs accrue to different subpopulations
  - ▶ Federal government has traditionally not conducted much distributional analysis. Benefits and costs have been assessed population-wide.
- ▶ Under newly revised federal guidance (known as Circular A-4), agencies are now instructed to conduct distributional analysis when practical
  - ▶ Income groups as default subpopulation but analysis can be performed along other dimensions (such as race, sex, geography, age, etc.) where appropriate
  - ▶ Assess distribution of benefits and costs for each regulatory alternative
  - ▶ Weighting based on diminishing marginal utility of income permitted (not required)



# Distributional Analysis (cont'd)

- ▶ To conduct robust distributional analysis, agencies will need to fill data gaps on the distribution of benefits and costs of key regulatory impacts on different income or social groups
- ▶ Benefit incidence:
  - ▶ *E.g.* Incidence of disease and vulnerability
  - ▶ *E.g.* Demand elasticities for specific consumer populations
  - ▶ *See* Frontiers report for examples of data gaps in this area
- ▶ Cost incidence:
  - ▶ Assessing cost incidence in key sectors will require more research on pass-through—i.e. the degree to which additional marginal costs are passed onto consumers—and the consumer distribution



# Areas for Economic Research: Improving Inputs and Methods

- ▶ Non-market Valuation: Revealed and Stated Preferences
  - ▶ *E.g.*: Valuing ecosystem services
- ▶ Elasticity Estimates
  - ▶ *E.g.*: National Highway Traffic Safety Administration's fuel economy standards; also key for estimating pass-thru and incidence of costs
- ▶ Computational General Equilibrium Modeling
  - ▶ *E.g.*: EPA's SAGE model for social costs and distributional impacts of power sector regulations
- ▶ Data Needs (a few of many listed in the Frontiers report):
  - ▶ Coastal habitat carbon storage and sequestration data
  - ▶ Monetized benefits of wildfire management
  - ▶ Baseline cybersecurity risks

# Additional Areas for Economic Research: Uncertain Benefits and Costs

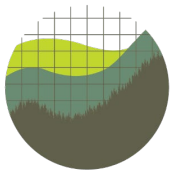
- ▶ Federal guidance known as Circular A-4 provides that, when facing uncertainty, agencies should:
  - ▶ Give a range based on probabilistic outcomes
  - ▶ Consider expert elicitation
  - ▶ Incorporate risk aversion where possible
  - ▶ Use certainty-equivalent valuations as a basis for comparison where appropriate
- ▶ What about extreme events? Research opportunities:
  - ▶ Assessing potential damages and their distribution
  - ▶ *E.g.:* social cost of greenhouse gases



## Additional Areas for Economic Research: Retrospective Regulatory Analysis (*Ex Post*)

- ▶ Executive guidance (Order 13,563): “Agencies shall consider how best to promote retrospective analysis of rules”
  - ▶ In practice, however, retrospective analysis is limited
- ▶ Opportunity: Revisit *ex ante* analysis, replace forecasts with realized economic outcomes
  - ▶ Identify potential avenues to modify regulatory standard
- ▶ Examples:
  - ▶ Effects of Clean Air Act regulations on health outcomes
  - ▶ Effects of energy-efficiency regulations on energy use and cost

# Practical Suggestions for Influencing Regulatory Policy



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# Tip 1: Ask Relevant Questions

- ▶ Remember, federal agencies are constrained by statutes. They will not entertain a policy unless they have authority to issue it
  - ▶ Consider the Clean Air Act example discussed earlier. EPA must set sourced-based pollution controls for the power sector. It cannot institute an economy-wide carbon tax or dictate the energy mix
- ▶ Devising pertinent questions may require
  - ▶ Consulting with legal or policy experts
  - ▶ Being open to second-best policies



## Tip 2: Make Your Research Easily Applicable and Accessible

- ▶ Where appropriate, consider using existing government valuations, inputs, or models
  - ▶ Inputs: *E.g.* Discount rate, social cost of carbon
  - ▶ Models: *E.g.* Annual Energy Outlook
- ▶ To extend reach, consider boosting the profile of your research through other channels aimed at non-expert audience
  - ▶ *E.g.* blog posts or short policy reports

## Tip 3: Comment and Engage

- ▶ Opportunities for engagement in the regulatory process
  - ▶ Pre-rule: *E.g.* Learning agendas, workshops, requests for information
  - ▶ Proposed Rule: Public comment period
- ▶ Unlike an academic article, comment letters can be short, simple, and highly derivative of other work. Options include:
  - ▶ A short cover letter noting and attaching a relevant research paper
  - ▶ A short comment supporting, criticizing, or offering further insights on any aspect of the proposal or its economic analysis
  - ▶ Co-authoring or co-signing a letter with other authors
  - ▶ Confirming/supporting points that seem obvious is still valuable
  - ▶ Look for explicit calls for comments in proposed rules

# Thank You for Attending!



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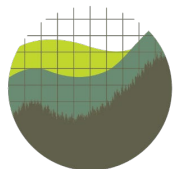
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