Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

November 12, 2020

Thank you for this chance to comment on the Economic Guidelines. I'm the legal director of the Institute for Policy Integrity, a nonpartisan think tank at NYU School of Law that studies regulatory analyses.

I thank the panel for their report, particularly for their consistent advice to give due weight to ancillary impacts, because, as the report says: "there are no second-class categories of benefits or costs."

Policy Integrity does disagree with some panel recommendations. In particular, the panel's suggestion to use an opportunity cost of capital approach to discounting, with rates as high as 7%, for intergenerational effects is inconsistent with OIRA's advice, with EPA's past practices, and with legal standards for rational analysis. While Circular A-4, as written in 2003, does say agencies should use 3- and 7-percent as default rates, they are simply defaults that should not override best practices or analysts' judgment. OIRA made clear in 2015 that [quote] "use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself." [end quote] Even in the April 2020 revision of vehicle emission standards, EPA admitted that 7% was not appropriate for its central analysis of future climate effects.

The 7% rate is overestimated, based on outdated data, and fails to account for upward biases from unpriced externalities, market power rents, differences between private and social risks, and long-term uncertainty. There is no reason to break from the *Guideline's* longstanding instructions to focus on the consumption rate for discounting effects over long time horizons.

To offer a path forward, the panel's report suggests the ultimate solution is moving to a declining discount rate. Policy Integrity agrees. The SAB should simply strongly and directly recommend a declining discount rate approach, and should not endorse an opportunity cost of capital approach for intergenerational discounting.

Also, the panel's suggestion to cut short the time horizon for analysis if rules will be periodically reviewed, would arbitrarily cut out important future effects from analysis. Instead, upon future reviews, analysts should just properly calibrate their baselines to avoid any overlaps.

The panel makes inconsistent recommendations on retrospective review. In the cover letter and at pages 6-7, the panel says retro review should prioritize rules with high ex-ante cost estimates or uncertain benefits estimates, seeming to reflect unwarranted suspicion about unquantified benefits, or perhaps to assume the goal of review is to reduce costs. Rather, the goal of retro review should be to increase net benefits. EPA should prioritize reviewing rules when changed circumstances or emerging science indicates that actual costs and benefits likely diverge from ex-ante estimates. The criteria the report offers on page 18—like the overall significance of the economic effects and the value of information—are better criteria.

I refer the SAB to our prior comments to the panel on issues like unquantified effects, standing, the treatment of behavioral economics, the health-wealth tradeoff, employment analysis, among other issues.

Sincerely,

Jason A. Schwartz, Legal Director

Institute for Policy Integrity

Attached:

Policy Integrity's Initial Comments to the Economic Guidelines Review Panel, April 15, 2020

Policy Integrity's First Batch of Additional Comments to the Panel, May 12, 2020

Policy Integrity's Second Batch of Additional Comments to the Panel, May 20, 2020

Policy Integrity's Oral Comments to the Panel, May 25, 2020

Policy Integrity's Proposed Redline on Scope and Standing, May 26, 2020

Policy Integrity's Oral Comments to the Panel on Discounting, June 9, 2020