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NEW ANALYSIS CLARIFIES LEGAL DYNAMICS OF TRUMP ADMINISTRATION'S RESCISSION OF REGULATORY GUIDANCE

Withdrawing the 2023 updates to OMB's Circular A-4 will require peer review, and will subject new regulatory/deregulatory actions to significant legal risk

The Trump Administration recently announced an Executive Order directing the Office of Management and Budget (OMB) to rescind the 2023 update to Circular A-4, which guides federal agencies on assessing the benefits and costs of significant rules. This regulatory guidance plays a crucial role in shaping the design of numerous rules that affect air and water quality, food safety, workplace hazards, and other issues. The directive would reinstate the outdated 2003 version of Circular A-4.

A new analysis from the Institute for Policy Integrity at NYU School of Law clarifies the legal issues surrounding this rescission. By statute, any update to OMB's guidance requires peer review. Given that requirement, properly rescinding Circular A-4 requires expert scrutiny and cannot be achieved with the stroke of a pen. Moreover, even if OMB does rescind the 2023 update, agency actions (including deregulatory efforts) that rely on outdated analytical practices from the 2003 Circular A-4 could face heightened legal risk.

Richard Revesz, faculty director at the Institute for Policy Integrity and former Administrator of the Office of Information and Regulatory Affairs, who supervised the updating of Circular A-4, released the following statement:

"The revised Circular A-4 reflects advances over the last 20 years in science, economics, and the operation of markets. The updates went through a public comment period and were subjected to an independent peer review process, as required by the Regulatory Right-to-Know Act. Restoring an obsolete document will lead to regulatory actions that impose significant harm to the health, workplaces, and economic interests of the American people. Such actions will face significant hurdles in the courts."

Lawyers from the Institute for Policy Integrity are available for interviews on these issues.

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The Institute for Policy Integrity *at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking. The institute produces original scholarly research in the fields of economics, law, and regulatory policy; and advocates for reform before courts, legislatures, and executive agencies.*