

# REGULATION'S RALLYING CRY: MAKING REGULATION WORK FOR THE PUBLIC

The Overwhelming Support for Progressive Reforms to The Regulatory  
Process

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## Key Findings

In response to the Biden Administration's Executive Order 14094<sup>1</sup>, which made groundbreaking reforms to improve and strengthen the regulatory process, Public Citizen analyzed the thousands of comments that the Administration received from the public regarding the reforms. This report finds that the public overwhelmingly supports modernizing the regulatory process to work in the public interest instead of for corporate special interests.<sup>2</sup>

## Introduction

Few political issues have as much impact on the lives of ordinary Americans while receiving as little attention from them as government regulation. There is no doubt that government regulations that protect consumers, workers, public health and safety, and the environment play a critical role in improving the lives of everyday Americans, and when they are rolled back or weakened, everyday Americans are often the ones that pay the price while corporate special interests reap the benefit. Yet there is a belief that government regulations are hardly at the top of the public's mind or are hardly a so-called "kitchen table" issue that matters to voters.

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<sup>1</sup> Executive Order 14094 of April 6, 2023, 88 Fed. Reg. 21879 (2023), *available at* <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

<sup>2</sup> Note: The data for this report was compiled solely from the public comment submissions to the Regulations.gov docket titled "Circular A-4 Modernization Updates," Docket ID OMB-2022-0014, which accepted public comment on one portion of the modernizing regulatory review reforms, *available at* <https://www.regulations.gov/docket/OMB-2022-0014>; *see also* Modernizing Regulatory Review, 89 Fed. Reg. 21879 (Apr. 7, 2023), *available at* <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>. The bulk comments that Public Citizen was a major driver of were submitted solely to this docket. Notably, the bulk comments express support for both the "Circular A-4 Modernization Updates," as well as for the "EO 12866 Meetings Guidance," which had its own separate Regulations.gov docket, Docket ID OMB-2022-0011, which accepted public comment on the second portion of the modernizing regulatory review reforms, *available at* <https://www.regulations.gov/docket/OMB-2022-0011>; *see also* Request for Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review), 88 Fed. Reg. 20916 (Apr. 7, 2023), *available at* <https://www.federalregister.gov/documents/2023/04/07/2023-07360/request-for-comments-on-guidance-implementing-section-2e-of-the-executive-order-of-april-6-2023>. The "EO 12866 Meetings Guidance" docket received 38 public comments, while the "Circular A-4 Modernization Updates" docket received 4,499. For the purpose of simplicity and due to the large discrepancy in the number of submissions to the two dockets, only the "Circular A-4 Modernization Updates" docket was used as a data source. The authors' decision to not incorporate data from the "EO 12866 Meetings Guidance" docket into this report is neither intended to be a reflection of the docket and its contents' value or significance, nor a dismissal of or disregard for the public comments it received.

This past spring, the Biden Administration proved this conventional wisdom wrong when it received overwhelming support for a set of important new reforms to the rulemaking process.

The new reforms to improve and strengthen the regulatory process are designed to tackle three major problems. First, the regulatory process has long been dominated by corporate special interests who have the resources and access to influence government agencies, which leads to weaker, more corporate-friendly regulations. Numerous studies have shown that when agencies develop regulations, corporations and corporate special interest groups have many more meetings with agency officials working on those regulations than public interest groups or members of the public. Inevitably, this results in corporate capture of the regulatory process, meaning the agencies have become unduly influenced by corporate actors and their special interests.

Second, a key point in the regulatory process has also often been a problematic source of corporate influence; namely, the U.S. Office of Information and Regulatory Affairs (OIRA), a small White House office within the U.S. Office of Management and Budget (OMB) that reviews many of the most important regulations before they are issued. OIRA has long had a reputation for weakening and delaying regulations that protect the public. Not surprisingly, studies have also shown that much like agencies, OIRA staff meet with corporations and corporate special interest groups who oppose strong regulations more often than supporters of those regulations.<sup>3</sup> Making matters worse, the public has little way of seeing OIRA's anti-regulatory impact or holding it accountable given the notorious lack of transparency within the White House office.

Finally, the regulatory process has increasingly placed more weight on the costs of regulations to corporations than on ensuring that regulations are most effective at protecting consumers, workers, the environment, and public health and safety. This is because government agencies must conduct a cost-benefit analysis in order to justify many of the most important and beneficial regulations on economic grounds.

While this may sound sensible in theory, in practice, the benefits of regulations that protect the public, such as saving lives, improving public health, making society more just and fair, and preventing environmental damage, are much harder, if not impossible, to calculate than the costs of complying with those regulations for corporations. The end result is that the regulatory process systematically favors regulations that are cheaper to

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<sup>3</sup> See, e.g., Simon F. Haeder & Susan Webb Yackee, *Influence and the Administrative Process: Lobbying the U.S. President's Office of Management and Budget*, 109 AM. POL. SCI. REV. 507 (2015); Reina Steinzor, et al., *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment*, Ctr. for Progressive Reform (2011), available at [http://progressivereform.net/articles/OIRA\\_Meetings\\_1111.pdf](http://progressivereform.net/articles/OIRA_Meetings_1111.pdf).

big corporations, even if they are weaker and less effective at protecting the public, and regular Americans pay the price.

The Biden Administration made fixing these major problems in the regulatory process a priority on Day One by releasing the “Modernizing Regulatory Review” memorandum,<sup>4</sup> which directed OMB and government agencies to develop recommendations to strengthen, improve, and modernize the regulatory process. This led to the groundbreaking Executive Order 14094 on Modernizing Regulatory Review issued in April 2023.

EO 14094 made new and important reforms to directly address the problems of corporate capture in the regulatory process. First, it directed agencies to promote public participation by encouraging the public to submit petitions for new regulations in areas where protections for the public are too weak or missing. This will make the regulatory process more inclusive of the voices of those who support and benefit from new regulations to balance out the corporate special interests opposed to them.

Second, it instructs agencies to conduct direct and proactive outreach to those members of the public and communities that benefit the most from new regulations, such as front-line and fence-line communities most exposed to environmental pollution and toxins, consumers vulnerable to unsafe products and deceptive and abusive financial practices, workers in dangerous workplaces, and minorities that face discrimination. This is a big change from the status quo, which put the burden on the public to make its voice heard at government agencies, usually leading to corporate special interests having the loudest voice. Since the issuance of EO 14094, the Biden Administration followed up with detailed guidance<sup>5</sup> on how agencies can put in place effective and durable measures to ensure such proactive outreach.

Third, EO 14094 made the regulatory review process at OIRA more streamlined and balanced with a special emphasis on reducing the influence of corporate lobbyists in the process. The changes under the EO will mean that OIRA reviews fewer regulations, which will lead to a more efficient review process that results in less delays for the most important new regulatory protections. This is a much needed change that was long

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<sup>4</sup> Memorandum from President Joseph R. Biden, Jr. to the Heads of Executive Departments and Agencies, Subject: Modernizing Regulatory Review (Jan. 20, 2021), *available at* <https://www.whitehouse.gov/briefingroom/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

<sup>5</sup> Memorandum from Administrator of the Office of Info. & Regul. Affairs Richard L. Revesz to the Heads of Executive Departments and Agencies, Subject: Broadening Public Participation and Community Engagement in the Regulatory Process (July 19, 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

overdue given that the threshold for whether OIRA reviews a regulation had not been updated for 30 years.

EO 14094 also prioritized OIRA meetings with everyday Americans who benefit the most from new regulations to balance out the influence of corporate lobbyists that have historically dominated meetings with OIRA. OIRA will now intentionally seek to meet with members of the public that have not traditionally participated in OIRA meetings, particularly those who directly benefit from the specific regulatory protections at issue in their everyday lives. At the same time, OIRA will avoid meeting with the same corporate lobbyists repeatedly, and consolidate meetings requested by different corporate lobbyists to reduce the amount of time OIRA spends reviewing new regulations so the public can benefit from them sooner.

Finally, EO 14094 makes critical new changes to address the flaws in how agencies calculate the costs and benefits of new regulations that protect the public. Not only are these changes necessary to update the prior methodology<sup>6</sup> for calculating regulatory costs and benefits that is now over 20 years old and outdated, but they are based on the best and most up-to-date economic research.

First, the reforms place the very real benefits of new regulations that are hard to monetize, such as clean air and water; lives saved; and a fairer, more equitable society; on equal footing with the much easier to monetize costs of those regulations to corporations.

Second, the reforms ensure that agencies are not ignoring the benefits of regulations that prevent future harms, such as regulations intended to fight climate change, just because the costs of those regulations occur now. It makes little policy sense for agencies to be calculating the costs and benefits of regulations in a way that favors saving corporations money in the short term if it results in the public paying the price in the long term. Continuing to ignore future regulatory benefits cuts against the consensus of economists.

Third, the changes under EO 14094 will finally require agencies to pay special attention to not only how much a regulation benefits society, but also who the new regulatory protections benefit the most: often the most underserved and low-income populations. Prior to EO 14094, agencies would simply compare the costs of regulation to corporations with the benefits to society without taking into account that a dollar of cost savings to wealthy corporations is certainly not the same as a dollar of benefits to those who benefit from regulation, particularly low-income and underserved populations. The changes now correct for this by requiring agencies to place more weight when a regulation is intended to benefit regular Americans for whom a dollar of regulatory benefits is worth much more than a dollar of cost savings to corporations.

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<sup>6</sup> Office of Mgmt. & Budget, Circular A-4 (2003), *available at* [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

In sum, the Biden Administration's EO 14094 makes ambitious and long overdue reforms to the regulatory process that will ensure regulations are providing the greatest benefits in improving the lives of regular Americans.

Nevertheless, the Biden Administration took it a step further and was intent on getting the public's feedback on the changes in order to allow the public to be involved in the process. The results were clear: our analysis of the comments received after the Biden Administration proposed the reforms under EO 14094 shows that the public overwhelmingly supports the Administration's reforms to improve and strengthen the regulatory process.

## I. Supporters of the Rule Change Outnumber Opposition 3-to-1

Public Citizen analyzed all unique comments submitted to OIRA and determined whether the comment supported or opposed the specific changes to the regulatory process. In total, there were 211 unique comments submitted, 191 of which took a position of either support or opposition.<sup>7</sup> Of these 191 comments, the majority, 110, were supportive of the changes.

Many individuals and groups sign on to comments together. Thus, a single comment can include many signers (organizations or individuals or both).<sup>8</sup>

Public Citizen also analyzed each comment to determine the total number of signers on each comment. In total, 632 organizations and individuals signed comments, 471 of which signed supportive comments while 161 signed comments in opposition, giving the supporters nearly a three-to-one advantage. [Figure 1]

The stark contrast between supporters and opponents evidences how being against updating an antiquated guidance document that was literally stuck in the 1990s is largely a thing of the past. Supporters of the regulatory process reforms champion the updates for modernizing the regulatory process to work in the public interest instead of for corporate special interests, as it had for the past 30 years. The overwhelming support for the reforms is regulation's rallying cry; a sign that the public by and large values all the

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<sup>7</sup> There were 211 unique comments submitted. Of these, we determined 20 comments non-responsive in terms of support or opposition to the changes. Those were excluded from the analysis.

<sup>8</sup> For example, 26 state attorneys general signed a single comment opposing the changes, *see* Virginia and 25 Other States, Comment Letter on Proposed OMB Circular No. A-4, "Regulatory Analysis" (June 6, 2023), *available at* <https://bit.ly/3upfzZQ>; while another 14 signed a different comment in support, *see* Attorneys General of New York, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington, Comment Letter on Proposed OMB Circular No. A-4, "Regulatory Analysis" (June 20, 2023), *available at* <https://bit.ly/40DVyel>.



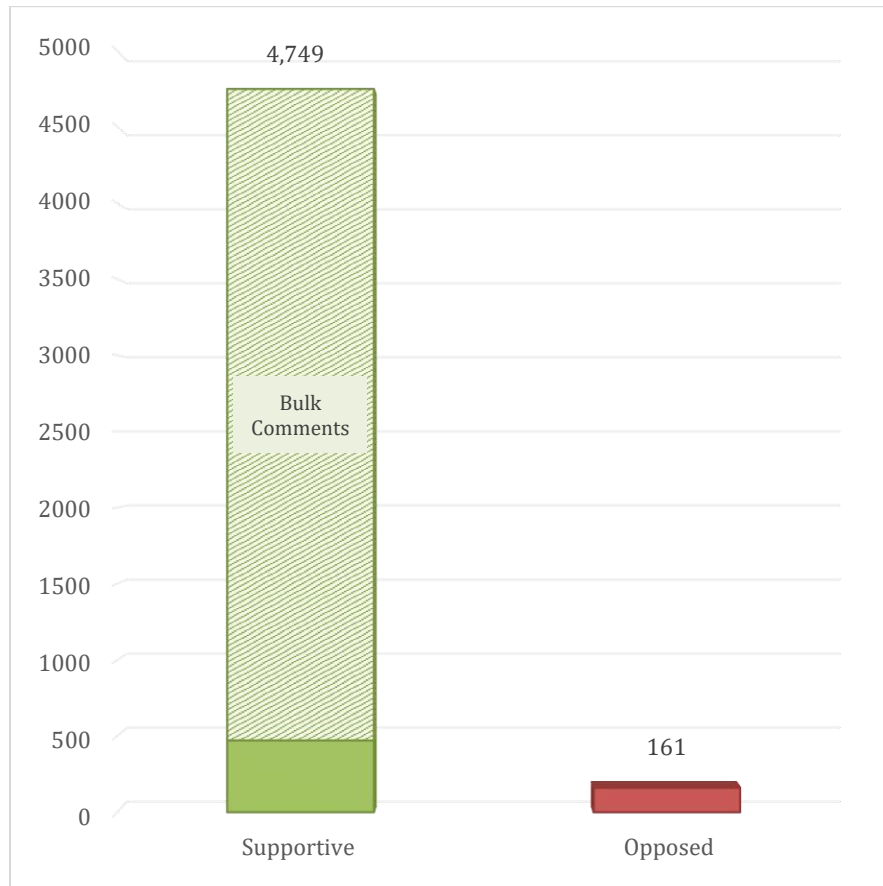
benefits (perhaps most importantly, the unquantifiable benefits), regulation has to offer, especially when it comes to workers' rights, consumers' rights, public health, and the environment.

Figure 1 – Individuals and Entities Signing Comments  
(Supportive vs. Opposed)



The three-to-one finding does not include additional comments submitted by those prompted by others to submit comments. In full transparency, Public Citizen was a major driver of these bulk comments, all of which were made in support of the changes. Including the signers of bulk comments, supporters outnumber the opposition 29-to-1. [Figure 2]

Figure 2 – Individuals and Entities Signing Comments  
(Including Bulk Comment Signers, Supportive vs. Opposed)



## Conclusion

The Biden Administration’s changes to the regulatory process are not only long overdue, but also stand on their own merits by dramatically strengthening the process which will ultimately improve the lives of the American public. Thus, it is no surprise that our analysis shows widespread and overwhelming public support for these changes.