



United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

Office of Commissioner  
Rebecca Kelly Slaughter

June 6, 2023

Richard L. Revesz  
Administrator  
Office of Information and Regulatory Affairs  
725 17th St., NW  
Washington, DC 20503

Re: Draft for public review  
Circular A-4 Modernization Updates  
Dkt. No. OMB-2022-0014

Dear Administrator Revesz:

I respectfully submit this comment<sup>1</sup> in response to the Office of Information and Regulatory Affairs's ("OIRA") April 6, 2023 Draft for Public Review titled "Circular A-4 Modernization Updates" ("Proposed Circular" or "Proposal"). I commend OIRA for explicitly recognizing the importance of considering distributional impacts of regulations and for providing guidance to agencies as to how to incorporate distributional considerations into our analyses of regulatory effects.

I am a Commissioner at the Federal Trade Commission ("FTC"). The FTC has a dual mandate to protect the public from deceptive or unfair business practices and from unfair methods of competition. We pursue our mission using a variety of tools, including law enforcement, research, advocacy, and rulemaking. It is vitally important, in my view, for the FTC to consider distributional impacts when setting enforcement priorities and developing the law, including through new rules and updates to existing rules. Although the FTC, as an independent agency, is not subject to OIRA review for rulemaking, the Commission's talented staff regularly conduct detailed economic analyses of estimated costs and benefits of potential Commission actions and reasonable alternatives in accordance with Circular A-4 guidance. I also

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For example, case selection can be positively informed by distributional analysis. Imagine two unlawful mergers of healthcare firms, one that would likely raise the price of dialysis by 20% in a low-income area and the other that would likely raise the price of liposuction by 25% in a high-income area. If the Commission had sufficient resources to litigate only one of the mergers and failed to consider the distributional impacts, it might choose to litigate the one with the larger price increase. Thoughtful consideration of distributional impacts, however, could militate toward litigating to protect the more cost-sensitive consumers of dialysis services. So too for equally unlawful and harmful mergers in communities with different resources: Because communities of color tend to be disproportionately lower income in the United States, it is more difficult for them to bear increased marginal costs of healthcare or to overcome lack of access to products and services caused by a lack of competition.<sup>4</sup> These are simple hypotheticals to show the potential utility of analyzing distributional impacts in a law-enforcement context constrained by limited resources.

Similar principles apply when prioritizing subjects for rulemaking and making choices among reasonable alternatives to achieve regulatory objectives. The first new rule under section 18 of the FTC Act that .0015i18 rkelysection6ncome 12.0Ae othBtre004 Tcprohibit the impersonation of government in the American community, but it does not affect every community equally. As the advance notice of proposed rulemaking notes, impersonation “scams often specifically target older consumers and communities of color.”

<sup>5</sup> This rather high-level distributional-

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