Congressional Research Service
Informing the legislative debate since 1914

# Cost-Benefit Analysis and Financial Regulator Rulemaking

**David W. Perkins**
Analyst in Macroeconomic Policy

**Maeve P. Carey**
Specialist in Government Organization and Management

April 12, 2017

**Congressional Research Service**
7-5700
www.crs.gov
R44813

**CRS REPORT**
Prepared for Members and
Committees of Congress

# Summary

Cost-benefit analysis (CBA) in the federal rulemaking process is the systematic examination, estimation, and comparison of the potential economic costs and benefits resulting from the promulgation of a new rule. Agencies with rulemaking authority implement regulations that carry the force of law. While this system allows technical rules to be designed by experts that are to some degree insulated from political considerations, it also results in rules being implemented by executive branch staff that arguably are not directly accountable to the electorate.

One method for Congress to increase accountability is to require the regulators to conduct analyses of likely effects of proposed regulations. In this way, an agency demonstrates that it gave reasoned consideration to the effects of the proposed rules. CBA is an important type of such analysis, as comparing costs and benefits can be useful in determining whether or not a regulation is beneficial. However, performing CBA can be a difficult and time-consuming process, and it produces uncertain results because it involves making assumptions about future outcomes. Some observers argue that financial regulation CBA is particularly challenging. This raises questions about what parameters and level of detail agencies should be required to include in their CBA.

While most federal regulatory agencies are directed by Executive Order 12866 and Office of Management and Budget Circular A-4 in their performance of CBAs, financial regulators are generally not subject to these directives. Financial regulators are statutorily required to perform certain CBA: requirements such as the Paperwork Reduction Act (P.L. 104-13) and Regulatory Flexibility Act (P.L. 96-354) generally apply to all financial regulators; financial regulators that regulate the banking system are subject to requirements set out in the Riegle Community Development and Regulatory Improvement Act (P.L. 103-325); and agencies such as the Securities and Exchange Commission (SEC), the Consumer Financial Protection Bureau (CFPB,) and the Commodities Futures Trading Commission (CFTC) face requirements specific to them. However, the requirements facing individual financial regulators generally allow them to perform analysis under less specific instruction than is contained in the requirements that are cited above and apply to nonindependent regulatory agencies.

Whether the requirements facing financial regulators should allow for this discretion is a contentious issue. Some observers assert that financial regulators should maintain a relatively high degree of discretion over when and how to conduct CBA. They argue that characteristics of the financial industry and regulation make CBAs in this area especially uncertain and contestable, and assert that financial regulation effects depend entirely on human and market reactions; finance plays a central role in a huge, complex economic system; and financial regulations' effects are more likely (relative to other types of regulation) to include transfers between groups not well accounted for in net measurements. They further argue that requisite CBAs that are uncertain and contestable are more likely to disguise agency discretion as objective fact and provide the opportunity for interested parties to challenge socially beneficial regulation with their own subjective, self-interested analyses.

Other observers assert that financial regulators should face more stringent requirements than they currently do. They refute claims that financial CBAs are necessarily more uncertain or contestable than in other areas. Also, they argue that tools and techniques would be developed to overcome challenges if CBAs were required. They further argue that even uncertain and contestable CBAs are effective in disciplining agencies because they create transparency of the agency's evaluations of proposed regulations and allow for outside assessment of that evaluation.

Recent Congresses have been active on this issue, and the House has passed several bills in the 115th Congress that would increase CBA requirements. Recent proposals would affect either all regulators including financial regulators, financial regulators as a group, or individual financial regulators.

# Contents



## Contacts

# Introduction

Congress has granted many federal agencies the authority to issue regulations that carry the force of law. This grant of authority raises the issue of how those agencies should be held accountable for the regulations they implement. One method of maintaining accountability is requiring agencies to analyze the potential effects of new regulations—sometimes called *regulatory analysis* or *regulatory impact analysis*—before implementing them and making the analyses public during the rulemaking process.[1] An important and commonly performed type of regulatory analysis is a *cost-benefit analysis* (CBA)—a systematic examination, estimation, and comparison of the economic costs and benefits resulting from the implementation of a new rule. By performing and making public such analyses, an agency demonstrates that it has given reasoned consideration to the necessity and efficacy of a rule and the effects it will have on society.

Most agencies regulating the financial industry are not subject to certain statutes or other requirements that apply to most executive branch agencies, allowing them to operate with a relatively high degree of independence from the President and Congress.[2] These financial regulators—along with other agencies that have similar independence—are often referred to as *independent regulatory agencies*.[3] Agencies are given this independence in part so that experts writing technical rules have some degree of insulation from political considerations.[4] One aspect of these regulatory agencies' independence is that they are not subject to certain requirements that direct other agencies to perform CBAs with certain parameters and executive review. Some observers argue that this independence is appropriate and that subjecting financial regulators to increased requirements would inhibit implementing necessary, beneficial regulation. However, others argue that financial regulators should be subject to greater requirements to increase accountability. The debate has drawn increased attention in recent years as regulators promulgate and continue to promulgate rules mandated and authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). In response, a number of bills in recent Congresses have proposed increased requirements.

This report examines issues related to financial regulators and CBAs, including potential difficulties facing such regulators and methods available to them when preforming a CBA; the analytical requirements the agencies currently face; and the arguments for and against increasing requirements on financial regulators. This report also briefly describes several examples of proposed legislation that would change the requirements facing financial regulators.

[1] The federal rulemaking process is guided by a set of procedures and requirements developed by Congress and various Presidents over the last 60 to 70 years. This report focuses on requirements related to cost-benefit analysis faced by financial regulators. For a more detailed examination of the federal rulemaking process, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

[2] As explained later in this report, financial regulators are typically thought to include the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Securities and Exchange Commission, Bureau of Consumer Financial Protection, Office of Financial Research, Office of the Comptroller of the Currency, and National Credit Union Administration.

[3] The independent regulatory agencies are listed at 44 U.S.C. §3502(5) and also later in this report.

[4] For more information on the history and reasons for financial regulator independence see CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by Henry B. Hogue, Marc Labonte, and Baird Webel.

# Overview of Cost-Benefit Analysis

CBA can help ensure that regulators demonstrate that their decisions are based on an informed estimation of likely consequences during the development, issuance, and implementation of rules. In the analysis, economists and other experts use theory, modeling, statistical analysis, and other tools to estimate the likely outcomes if a particular regulation were to be implemented. These outcomes are compared with the likely outcomes if no regulation or a different regulation were implemented. Then the good outcomes (benefits) can be weighed against bad outcomes (costs) of a regulatory action to determine whether and to what degree a regulation is on net beneficial to society.

Benefits may include such outcomes as deaths and injuries avoided, acres of rare habitat saved, or a decreased probability of financial crisis. Costs may include outcomes such as increased production costs for companies, regulation compliance cost to companies, and increased prices for consumers. *Externalities*—the effects experienced by parties that are not directly involved in the market transactions covered by the regulation—also should be included in the analysis to the extent possible.[5] If it were the case that regulators were expected to make decisions with complete information, all societal costs and benefits would need to be accurately and precisely estimated. These outcomes would be *quantified* (assigned accurate numerical values) and *monetized* (assigned an accurate dollar value). Proposed rules would be finalized and implemented only if benefits were expected to exceed costs, and in a form that maximized net benefits.[6]

However, societal costs and benefits may be difficult to accurately estimate, quantify, and monetize.[7] Therefore, performing most CBAs involves some degree of subjective human judgement and uncertainty, and predicted results are often expressed as a range of values. As discussed in more detail in the "Financial Regulator Requirements Debate" section, some argue that performing CBAs for financial regulation is particularly challenging, due largely to the high degree of uncertainty over precise regulatory costs and outcomes.

This raises questions about the appropriate scope, level of detail, and degree of quantification that should be required of analysis performed in the rulemaking process. On one hand, overly lenient requirements could allow agencies to implement overly burdensome regulation with limited benefit without due consideration of consequences. In addition, a CBA can be an informational tool that estimates the potential effects of a rule and informs the agency and the public as various groups advocate for certain policies—and potentially exaggerate or minimize risks, costs, or likely outcomes of a certain regulation.[8]

In contrast, overly onerous analytic requirements could risk impeding the implementation of necessary, beneficial regulation because performing the analysis would be too time consuming, too costly, or simply not possible. Another concern is that if agencies face highly burdensome requirements, they may have an incentive to achieve policy goals through other methods—such as issuing policy statements, guidance documents, and technical manuals—that create less accountability than the rulemaking process. In addition, a CBA itself can be costly and is

[5] Tevfik F. Nas, *Cost-Benefits Analysis: Theory and Application,* 2nd ed. (Lanham, MD: Lexington Books, 2016), pp. 47-54.

[6] Eric A. Posner and E. Glen Weyl, "Benefit-Cost Paradigms in Financial Regulation," *Coase-Snador Institute for Law and Economics Working Paper No. 660,* March 2014, p. 3.

[7] Robert W. Hahn and Cass R. Sunstein, "A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis," *University of Pennsylvania Law Review,* vol. 150 (2002), pp. 1489-1505.

[8] Ibid.

performed by departments and agencies funded by general taxes and fees on industry.[9] Finally, requiring uncertain and contestable CBAs may allow self-interested parties to impede socially beneficial regulation by challenging agency analysis in court and offering their own subjective analysis.[10] For these reasons, stringent CBA requirements may themselves generate more costs than benefits.

# Current Cost-Benefit Analysis Requirements

As mentioned above, CBA can be a useful tool for ensuring good regulations are implemented and that regulatory agencies are accountable. However, requirements to perform such analyses may restrict agencies from effectively regulating. This section examines current CBA requirements, including those that apply to nonfinancial regulators and those that direct financial regulators more specifically. It also reviews certain government reports examining the methods and results of recent regulatory CBAs performed by financial regulators under the existing requirements.

## Requirements for Nonfinancial Regulators: Executive Order 12866 and OMB Circular A-4

The primary requirement for most agencies to calculate estimates of costs and benefits when issuing rules is under Executive Order (E.O.) 12866, which was issued in 1993 by President William Clinton.[11] E.O. 12866 requires covered agencies—that is, agencies other than independent regulatory agencies, which includes most of the financial regulators—to submit "significant" rules to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review, along with an initial cost and benefit assessment.[12] For rules that are determined to be significant because their annual economic effect is likely to exceed a $100 million threshold, covered agencies are required to conduct a more in-depth CBA. Specifically, the order requires agencies to provide to OIRA an assessment of anticipated costs and benefits of the rule, and an assessment of the costs and benefits of "reasonably feasible alternatives" to the rule.[13] Other E.O. 12866 provisions encourage agencies to consider costs and

---

[9] Thomas O. McGarity, "Some Thoughts on 'Deossifying' the Rulemaking Process," *Duke Law Journal*, vol. 41 (1992), pp. 1385-1398.

[10] John C. Coates IV, "Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications," *Yale Law Journal*, vol. 124 (2015), pp. 898-902.

[11] Executive Order 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, October 4, 1993. For more detailed information about this and other cost-benefit analysis requirements in the rulemaking process, see CRS Report R41974, *Cost-Benefit and Other Analysis Requirements in the Rulemaking Process*, coordinated by Maeve P. Carey.

[12] Significant rules are defined in E.O. 12866 §3(f) as the following:

> Any regulatory action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

[13] E.O. 12866 §6(a)(3)(C).

benefits during the rulemaking process for all rules, although those other provisions do not require a complete, detailed cost-benefit analysis for non-economically significant rules.[14]

E.O. 12866 has remained in effect since 1993, and it was reaffirmed in 2011 in E.O. 13563 by President Barack Obama.[15] E.O. 13563 states that covered agencies should (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, (2) tailor regulations to impose the least burden on society, and (3) select regulatory approaches that maximize net benefits. It also directs agencies to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."[16]

In September 2003, OMB finalized Circular A-4 on regulatory analysis, which refined and replaced an earlier OMB guidance document, providing good-guidance practices to agencies for conducting their CBAs.[17] The circular states that it was "designed to assist analysts in the regulatory agencies by defining good regulatory analysis ... and standardizing the way benefits and costs of Federal regulatory actions are measured and reported." The document provides some specific information that agencies should generally include in their analyses, such as the statutory or judicial directives that authorize the action; the underlying problem or market failure prompting the regulation; consideration of a "reasonable number" of regulatory alternatives; and both a cost-benefit analysis and a cost-effectiveness analysis. Circular A-4 remains the current OMB guidance for agencies preparing CBAs under E.O. 12866 requirements.

## Exception for Independent Regulatory Agencies from Executive Order 12866

The exception for independent regulatory agencies in Executive Order 12866 is similar to the exception found in Executive Order 12291, in which President Ronald Reagan first established centralized regulatory review in OIRA and required cost-benefit analysis of certain regulations in 1981.[18] This decision is widely understood to have been based on political considerations regarding the statutorily designed independence of these agencies.[19] In short, President Reagan—and subsequent Presidents—viewed these agencies as having been designed by Congress to be independent of the President, and as such chose not to subject them to presidential (OIRA) review. The statutory categorization of those agencies had been codified in the Paperwork Reduction Act of 1980, which designated a special set of procedures for those agencies' information collection approvals from OMB. E.O. 12291, and later E.O. 12866, referenced the

[14] For example, Section 1(b)(6) requires agencies to "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." Section 1(b)(11) requires agencies to "tailor [their] regulations to impose the least burden on society," while "obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations." These provisions are considered to be more like guiding principles, however, rather than specific requirements for cost-benefit analysis.

[15] E.O. 13563, "Improving Regulations and Regulatory Review," 76 *Federal Register* 3821, January 21, 2011.

[16] E.O. 13563 §1(c).

[17] OMB Circular A-4, "Regulatory Analysis," September 17, 2003, at https://georgewbush-whitehouse.archives.gov/omb/circulars/a004/a-4.html. The circular took effect for "economically significant" proposed rules on January 1, 2004, and for "economically significant" final rules on January 1, 2005.

[18] Executive Order 12291, "Federal Regulation," 46 *Federal Register* 13193, February 19, 1981. This decision was reportedly made for political, not legal, reasons.

[19] See, for example, Sally Katzen, "Can Greater Use of Economic Analysis Improve Regulatory Policy at Independent Regulatory Commissions?" Opening Remarks, Washington, D.C., April 7, 2011, at http://www.rff.org/Documents/Events/Workshops%20and%20Conferences/110407_Regulation_KatzenRemarks.pdf, pp. 2-3.

PRA's list of agencies to identify the excepted agencies.[20] Currently, the list of independent regulatory agencies includes the following financial regulators:[21]

- Board of Governors of the Federal Reserve System,
- Commodity Futures Trading Commission,
- Federal Deposit Insurance Corporation,
- Federal Housing Finance Agency,
- Securities and Exchange Commission,
- Bureau of Consumer Financial Protection,
- Office of Financial Research,
- Office of the Comptroller of the Currency, and
- National Credit Union Administration.

When President Clinton issued Executive Order 12866 in 1993, he, like President Reagan, chose to exempt the independent regulatory agencies from the order's CBA requirements. Similarly, President Obama continued to exempt independent regulatory agencies from CBA requirements with E.O. 13563, although his OIRA Administrator encouraged those agencies to "give consideration to all [E.O. 13563's] provisions" in a memorandum issued soon after the executive order.[22] In July 2011, President Obama issued E.O. 13579, "Regulation and Independent Regulatory Agencies."[23] The executive order encouraged independent regulatory agencies to comply with some of the principles in E.O. 13563 that were directed to Cabinet departments and independent agencies (e.g., public participation, integration and innovation, flexible approaches, and science). In a separate memorandum issued the same day as the executive order, the President said he was taking these actions with "full respect for the independence of your agencies."[24] E.O. 13579 did not, however, directly apply the cost-benefit principles in E.O. 12866 and 13563 to independent regulatory agencies, nor did it require these regulators to conduct CBA before issuing their rules.

[20] 44 U.S.C. §3502(5).

[21] The complete list of independent regulatory agencies is as follows: "The Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission." 44 U.S.C. §3502(5). The United States International Trade Commission is one of the "other similar agenc[ies] designated by statute as a Federal independent regulatory agency" although it is not specifically listed in that provision of the *U.S. Code*. See 19 U.S.C. §1330(f) (stating that the United States International Trade Commission "shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code").

[22] Memorandum from Cass R. Sunstein, Administrator of OIRA, "Executive Order 13563, 'Improving Regulation and Regulatory Review'," February 2, 2011.

[23] Executive Order 13579, "Regulation and Independent Regulatory Agencies," 76 *Federal Register* 41587, July 14, 2011.

[24] Presidential Memorandum, "Regulation and Independent Regulatory Agencies," July 11, 2011, at https://obamawhitehouse.archives.gov/the-press-office/2011/07/11/memorandum-regulation-and-independent-regulatory-agencies.

## CBA Requirements on Financial Regulators

As previously discussed, the financial regulators are exempt from many of the analytical requirements and guidance documents that are applicable to executive agencies, including E.O. 12866 and OMB Circular A-4. However, financial regulators may be required to conduct CBA or other regulatory analyses under cross-cutting statutes or pursuant to the underlying statutes that provide them with rulemaking authority.

Requirements facing financial regulators arguably require a relatively narrow analysis or allow for more agency discretion compared to the requirements discussed above under E.O. 12866. For example, agencies may be required to "consider" or "estimate" costs, benefits, or other economic effects, but the degree to which those considerations must be quantified and monetized estimates is not specified. However, the requirements facing financial regulators are not trivial, and financial regulations have been vacated following judicial review when the court found the CBA performed during rulemaking to be deficient.[25]

### Cross-Cutting Analytical Requirements

The following statutes contain analytical requirements that apply to all federal regulatory agencies, including the financial regulators.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 (P.L. 96-354) requires federal agencies to assess the impact of their forthcoming regulations on "small entities," which the act defines as including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. Under the RFA, all regulatory agencies, including the financial regulators, must prepare a "regulatory flexibility analysis" at the time proposed and certain final rules are issued. The RFA requires the analysis to describe, among other things, (1) the reasons why the regulatory action is being considered; (2) the small entities to which the proposed rule will apply and, where feasible, an estimate of their number; (3) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and (4) any significant alternatives to the rule that would accomplish the statutory objectives while minimizing the impact on small entities.[26] However, these analytical requirements are not triggered if the head of the issuing agency certifies that the proposed rule would not have a "significant economic impact on a substantial number of small entities."[27]

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) of 1980 (P.L. 96-511) pertains to certain aspects of the rulemaking process, albeit not the rules themselves.[28] The PRA's primary purpose is to minimize the paperwork burden for individuals, small businesses, and others resulting from the collection

---

[25] For example, see Business Roundtable v SEC, 647 F.3d 1144, 1148 (D.C. Cir. 2011).

[26] Section 1100G of the Dodd-Frank Act (P.L. 111-203) added a requirement to 5 U.S.C. §603 of the RFA that for covered rules, the Consumer Financial Protection Bureau should include of a number of specific items in their impact analysis, including "any projected increase in the cost of credit for small entities."

[27] 5 U.S.C. §§601-612. Neither of the terms "significant" or "substantial" in this context is defined in the RFA.

[28] For more information on the PRA, see CRS Report R40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows. The authors of that report have left CRS; questions about its content may be directed to Maeve P. Carey.

of information by or for the federal government, which often stems from regulatory requirements: many information collections, recordkeeping requirements, and third-party disclosures are contained in or are authorized by regulations as monitoring or enforcement tools.[29] In fact, these paperwork requirements are sometimes a primary component of requirements stemming from financial regulation.

The PRA requires agencies to justify any collection of information from the public by establishing the need and intended use of the information, estimating the burden that the collection will impose on respondents, and showing that the collection is the least burdensome way to gather the information.[30] Paperwork burden is most commonly measured in terms of "burden hours." The burden-hour estimate for an information collection is a function of the frequency of the information collection, the estimated number of respondents, and the amount of time that the agency estimates it takes each respondent to complete the collection. Agencies must receive OIRA approval (signified by an OMB control number displayed on the information collection) for each collection request before it is implemented, and those approvals must be renewed at least every three years.[31] OIRA can disapprove any collection of information if it believes the collection is inconsistent with PRA requirements. However, multiheaded independent regulatory agencies can, by majority vote of the leadership, void any OIRA disapproval of a proposed information collection.[32]

## Analytical Requirements Applicable Solely to Banking Regulators

The Riegle Community Development and Regulatory Improvement Act (Riegle Act) imposes analytical requirements on rulemaking for the federal banking regulators—the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC). One of the Riegle Act's primary purposes is to reduce administrative requirements for insured depository institutions, and the scope of the analysis required reflects that specific aim. When determining the effective date and compliance requirements of new rules that impose additional reporting, disclosure, or other requirements on depository institutions, the federal banking regulators must take into consideration: "(1) Any administrative burden that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."[33]

## Agency-Specific Requirements for CBA

Certain individual agencies—the Securities and Exchange Commission (SEC), the Consumer Financial Protection Bureau (CFPB), and the Commodity Futures Trading Commission (CFTC)—are statutorily required to perform certain analysis in rulemaking specific to the agency. As mentioned previously, the parameters of analysis when "considering" cost and benefits are to

---

[29] The act generally defines a *collection of information* as the obtaining or disclosure of facts or opinions by or for an agency (Cabinet departments and independent agencies as well as independent regulatory agencies) by 10 or more nonfederal persons.

[30] 44 U.S.C. §§3501-3520.

[31] For an up-to-date inventory of OMB-approved information collections, see http://www.reginfo.gov/public/do/PRAMain.

[32] 44 U.S.C. §3507(f). Some, but not all, financial regulators are multiheaded. For example, the Consumer Financial Protection Bureau has a single head, while the Securities and Exchange Commission is multiheaded.

[33] 12 U.S.C. §4802(a).

a degree left to agency discretion, although analysis could be subject to judicial review if a party were to challenge the regulation in court.

The SEC is subject to requirements to analyze the effect of its rules, with an emphasis on market efficiency and competition. The National Securities Market Improvement Act (P.L. 104-290) requires the SEC to "consider or determine whether an action is necessary or appropriate in the public interest ... [and] whether the action will promote efficiency, competition, and capital formation."[34] The Securities Exchange Act (P.L. 73-291) requires the SEC to perform economic analysis on "the impact any such rule or regulation will have on competition."[35]

The CFPB must specifically consider the costs and benefits to consumers and the companies to which the new rules apply. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (P.L. 111-203) requires the CFPB to "consider (1) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and (2) the impact of proposed rules on covered persons ... and the impact on consumers in rural areas."[36]

The CFTC must evaluate costs and benefits of new rules and the analysis must include several specified considerations. The Commodity Exchange Act (P.L. 74-675) requires the CFTC to "consider the costs and benefits of the action" before promulgating a rule, and "the costs and benefits of the proposed Commission action shall be evaluated in light of: (A) considerations of protection of market participants and the public; (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets; (C) considerations of price discovery; (D) considerations of sound risk management practices; and (E) other public interest considerations."[37]

## Cost-Benefit Analysis in Practice

Reports on the characteristics of the agency-performed CBAs—including independent regulatory agencies—can illustrate what analyses are done in practice as part of rulemaking.

Section 624 of the Treasury and General Government Appropriations Act of 2001 (31 U.S.C. §1105 note)—sometimes known as the "Regulatory Right-to-Know Act"—requires OMB to issue an annual report to Congress on regulatory costs and benefits. The report generally includes an assessment of the CBAs for major rules done by agencies as a part of rulemaking.[38] The 2016 report indicated that independent financial regulatory agencies issued 8 major final rules during FY2015, and that although benefits and costs were considered during the rulemaking process for all these rules, they were not always monetized.[39] Six of these rules provided monetized costs, but

[34] 15 U.S.C §77b(b).

[35] 15 U.S.C §78w(a)(2).

[36] 12 U.S.C §5512.

[37] 12 U.S.C §19.

[38] For the purposes of this annual report to Congress, OMB defines "major rules" as any rule that meets one of three conditions: the rule is designated as major under the Congressional Review Act (5 U.S.C. §804(2)); the rule hits the analysis threshold under the Unfunded Mandates Reform Act of 1995 (UMRA); or the rule is designated as "economically significant" under section 3(f)(1) of Executive Order 12866. The three definitions are similar, and generally any rule that is expected to have an annual effect of $100 million or is in some way expected to materially affect some aspect of the economy or the public—such as competition, productivity, employment, environment, or public health or safety—is considered a major rule.

[39] Office of Management and Budget, Office of Information and Regulatory Affairs, 2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, (continued...)

none provided monetized benefits. In comparison, executive departments and agencies subject to E.O. 12866 implemented 30 major rules: 21 analyses monetized both benefits and costs; 6 monetized costs but not benefits; 2 monetized benefits but not costs; and 1 did not monetize costs or benefits.[40]

The Government Accountability Office (GAO) releases an annual report on Dodd-Frank regulations that examines analyses done by financial regulators. These reports typically make an assessment of the degree to which the analyses—for rulemaking related to Dodd-Frank provisions—were consistent with the directives of OMB Circular A-4, even though the regulators are not required to follow the directives. In general, GAO has found that financial regulator analysis is consistent with that guidance. For example, in the 2016 report, GAO notes,

> Independent federal financial regulators are not required to follow OMB's Circular A-4 when developing regulations, but they told us that they try to follow this guidance in principle or spirit. Regulators generally included the key elements of OMB' s guidance in their regulatory analyses for these major rules. To assess the extent to which the regulators follow Circular A-4, we examined 5 major rules ... Specifically, we examined whether the regulators (1) identified the problem to be addressed by the regulation; (2) established the baseline for analysis; (3) considered alternatives reflecting the range of statutory discretion; and (4) assessed the costs and benefits of the regulation. We found that all five rules we reviewed were consistent with OMB Circular A-4.[41]

# Challenges and Variants of Cost-Benefit Analysis

CBA of any type of regulation faces challenges in making an accurate assessment of the regulation's effects. Over recent decades, academics and agency experts have developed sophisticated and useful techniques to do these types of analyses, but they generally contain a degree of uncertainty.[42] Some challenges include

- behavioral changes of people as they adapt to a new regulation, which are difficult to predict;
- quantification that must overcome uncertainty over the causal relationship between the regulation and outcomes; and
- monetization, which is difficult for outcomes that do not have easily discernable monetary values.

Variations of CBAs address some of these difficulties, including

- cost-effectiveness analysis, which compares costs of alternative regulation when benefits cannot be accurately quantified or monetized;

(...continued)

2016, at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf.

[40] This count excludes "transfer rules." Transfer rules are rules that primarily caused income transfers, usually from taxpayers to program beneficiaries. The OMB annual report typically focuses on rules that have effects largely through private sector mandates.

[41] U.S. Government Accountability Office, *Dodd-Frank Regulations: Agencies' Efforts to Analyze and Coordinate Their Recent Final Rules*, GAO-17-188, December 2016, pp. 18-23, at http://www.gao.gov/assets/690/681868.pdf.

[42] Jonathan S. Masur and Eric A. Posner, "Unquantified Benefits and the Problem of Regulation Under Uncertainty," *Cornell Law Review*, vol. 102 (August 17, 2015), pp. 87-95.

- breakeven analysis, which can establish the likelihood or under what conditions a regulation would be beneficial;
- qualitative analysis with expert judgement, in which experienced professionals describe and explain likely effects that cannot be quantified and make a judgement as to how costs compare with benefits; and
- retrospective analysis, which estimates the *realized* costs and benefits following some period of time—often years—*after* implementation of rules.

This section examines these challenges and variants as they relate to CBA generally. There is debate over whether the challenges are particularly daunting for financial regulation CBA and to what degree different types of analysis can solve these problems. An examination of the arguments related to financial regulator CBA requirements can be found in the following section, entitled "Financial Regulator Requirements Debate."

## Challenges of CBA

One difficulty in performing cost-benefit analysis is trying to accurately determine the human behavioral response to the implementation of a regulation.[43] For example, consider a hypothetical and very simplified CBA that analyzes a new requirement that financial institutions make additional disclosures to customers about a certain type of loan. To estimate the benefit to consumers who avoided entering into a bad financial arrangement, the analysis would have to estimate, among other things, how many potential customers would read the disclosure and would elect not to use the product on the basis of that information. Of these, how many would then seek out a substitute credit source? Predicting human choices such as these involves modeling consumer behavior in this market, statistical interpretations of available data, and some degree of uncertainty.

Quantification of outcomes also poses challenges in determining causation and measuring magnitudes of effects.[44] Returning to the hypothetical regulation outlined above, suppose lenders also would be required to report additional performance data, such as default rates, about the loans. The additional cost of reporting could decrease loan profitability. In such a case, lenders will likely reduce the availability of these loans. An important cost of this regulation might be reduced economic growth by the contraction of credit. Making an estimation of this cost would involve macroeconomic modeling, statistical interpretation, and uncertainty.

After an estimate has been made of the quantity and magnitude of outcomes, those effects must be monetized because measuring the varied effects of a regulation requires a common unit of measurement. This becomes problematic when attempting to assign a dollar value to outcomes that do not have market prices.[45] For example, imagine a proposed regulation aimed at reducing the number of home foreclosures. An important benefit might be the avoidance of the emotional distress families may experience as a result of being forced to move from their homes and finding alternative housings. Assigning a dollar value to this outcome would require sophisticated techniques and would likewise involve uncertainty.

---

[43] John C. Coates IV, "Cost Benefit Analysis of Financial Regulation: A Reply," *The Yale Law Journal Forum*, January 22, 2015, pp. 311-312.

[44] Jonathan S. Masur and Eric A. Posner, "Unquantified Benefits and the Problem of Regulation Under Uncertainty," *Cornell Law Review*, vol. 102 (August 17, 2015), pp. 87-95.

[45] Ibid.

Finally, regulatory benefits may often be more difficult to monetize than major costs. Costs are often economic costs, which may be more easily monetized, such as an industry's reduction in economic activity or the added expense of complying with regulation. Benefits may be harder to quantify because of the difficulty in determining causation and because the outcomes are harder to price.[46] Financial regulation benefits that may be difficult to monetize include the emotional distress of foreclosure cited in the previous example, consumer and investor confidence in knowing they are protected from fraud, and decreased probability of a financial crisis.

## Variants of CBA

Quantified and monetized estimates generally provide the clearest measurement and comparison of the costs and benefits of proposed regulation. However, variants of CBA can be performed when full quantification and monetization is not entirely possible due to the challenges described above. Some of these variants include *cost-effectiveness analysis*, *breakeven analysis*, and *qualitative analysis with expert judgement*.[47] Also, agencies sometimes do *retrospective analysis*. Although not a part of rulemaking and so beyond the scope of this report, it deserves mention because this type of analysis is the subject of proposals to assess the regulatory system and identify regulations that should be amended or repealed.

### Cost-Effectiveness Analysis

Cost-effectiveness analysis may be useful if benefits of a regulation are hard to monetize. In these analyses, an outcome is identified as necessary or sufficiently important to the advancement of social welfare, such as preventing cancer cases, preserving wetlands, or reducing the likelihood of financial crises. A set of alternative regulations—ranging from stringent to lenient—is then analyzed to determine how well each alternative achieves the objective outcome and at what cost. This comparison is useful for identifying the most effective form of regulation.[48]

### Breakeven Analysis

Breakeven analysis may be useful when estimates of either benefits or costs or both face a relatively large degree of uncertainty, and the estimates fall within a wide range. In these analyses, the magnitudes of the quantified costs and benefits are compared to determine what values of the unquantified variables would have to be for the regulation to break even or impose no net cost on society. The analysis—in the face of a relatively high level of uncertainty—can reveal under what circumstances a regulation would benefit society or at least identify which regulations are most or least likely to do so.[49] For example, consider another highly stylized analysis of a hypothetical regulation aimed at reducing cases of a certain disease. The cost of the regulation is estimated to be $50 million; how many cases would be avoided can only be estimated in the range of 10,000-50,000; and monetizing the benefit of avoiding a case is problematic. Given these hypothetical values, the breakeven value of avoiding one case of the disease is between $1,000 and $5,000. To use extreme examples for the purpose of illustration: if

---

[46] Ibid.

[47] This list is not exhaustive, but rather an illustrative list of certain variants that have been suggested to address some of the challenges of financial regulation CBA.

[48] Office of Management and Budget, *Circular A-4*, September 17, 2003, pp. 10-12.

[49] Cass R. Sunstein, "Financial Regulation and Cost-Benefit Analysis: A Comment," *The Yale Law Journal Forum*, vol. 124 (January 22, 2015), pp. 270-279.

this disease is the common cold, it could be argued that the regulation is overly burdensome; but if the disease is fatal, it could be argued that the regulation should be implemented.

### Qualitative Analysis with Expert Judgement

Wherever benefits and costs cannot be quantified to a reasonably informative degree of certainty and precision, they could be analyzed qualitatively. This analysis type describes the factors considered, the rationale used in making a policy choice, and the regulators' professional judgement in assessing the regulation's welfare effects.[50]

### Retrospective Analysis

Retrospective analysis estimates the *realized* costs and benefits following some period of time—often years—*after implementation* of rules. This analysis eliminates some uncertainties about what outcomes will be observed under the regulation. However, the results of the analysis still involve assumptions and uncertainty in assessing the degree to which the regulation caused the observed outcomes or estimating what outcomes would have been realized if the regulation had never been implemented.[51] Retrospective analysis is different from most of the analysis covered in this report, in that it is an *ex post* analysis performed after implementation and so cannot be part of the rulemaking process.

## Financial Regulator Requirements Debate

Most observers agree that performing CBA is often a useful tool for the regulatory rule-writing process. However, whether financial regulators should be required to perform CBAs with specified parameters that would be subject to review is a matter of long-standing debate, probably at least in part due to their exemption from E.O. 12866. In addition, the issue may have attracted increased attention in recent years as many financial regulations have been implemented in response to the financial crisis, particularly after the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Some observers argue that financial regulators should maintain a relatively high degree of discretion over the role and form of CBAs in the rule-writing process. They assert

- certain characteristics of the finance industry—discussed in detail below—necessitate CBAs with more easily contestable assumptions and uncertain results than in other industries; and
- performing highly contestable and uncertain CBAs does not discipline agencies, but instead may provide an opportunity for interested parties to impede socially beneficial regulation.

Others argue that financial regulators should be subject to more stringent requirements than is currently the case. They assert

- performing CBAs for regulation of the finance industry does not pose greater difficulties than for regulation of other industries, and imposing requirements on

[50] Cass R. Sunstein, "Financial Regulation and Cost-Benefit Analysis: A Comment," *The Yale Law Journal Forum,* vol. 124 (January 22, 2015), pp. 276; Office of Management and Budget, *Circular A-4*, September 17, 2003, pp. 10, 27.

[51] Administrative Conference of the United States, *Administrative Conference Recommendation 2014-5: Retrospective Review of Agency Rules*, December 4, 2014.

financial regulators would spur them to overcome methodological and other challenges; and

- financial CBAs—despite contestable and uncertain results—would be the best tool for ensuring that regulation is implemented responsibly with due consideration of consequences.

This section presents the two sides of this debate.

## Arguments That Financial Regulator Discretion is Appropriate

Some observers assert that performing CBAs for financial regulation is different from other types of regulation. They claim financial regulation CBAs are more uncertain and contestable, and this limits the effectiveness of CBA requirements. Therefore, the argument goes, the CBA requirements facing most regulators would not be appropriate for financial regulators.[52] Others advocate more generally for a relatively high degree of agency discretion to use expert judgement.[53]

One potential reason for greater uncertainty in financial CBA is that the outcomes are almost wholly dependent on human behavioral responses. Unlike regulation of other sectors, the objects of regulation are not chemicals or pieces of machinery, but the activities of individuals and financial firms and their interactions in interrelated markets for intangible financial goods. The behaviors of a pollutant in an ecosystem, a drug in the human body, or material in a car during a crash are governed by biological, chemical, and physical laws. The implementation of a regulation does not change these reactions. However, the behavior and reactions in the financial system are governed by human behavior within a system of laws and regulations. A new regulation changes the system itself and its effects result entirely from human behavioral changes. This may make the effects—especially the first-order, direct effects—harder to accurately predict than in other industries.[54]

For example, if certain factories were required to install a piece of equipment that prevented the release of a pollutant, the cost of the equipment is identifiable and the direct effect of how much of the pollutant would be captured can likely be measured. In contrast, if a requirement is implemented on banks to hold more liquid assets, the cost to banks is uncertain because it depends on what types of assets banks choose to shed from their balance sheets, what they add, and what effect those actions have on the market prices of those assets. It is also unclear how to quantifiably measure the *liquidity* of the financial system or its resultant benefits.

Another reason cited as a potential cause for uncertain estimates is the central role the financial system plays in the entire economy. For most industries, changes in factors such as production cost, price, and quantity demanded and supplied resulting from regulations can be calculated using relatively well-vetted economic models. However, the causal channels through which financial changes affect overall economic activity are complex with no consensus macroeconomic model that can be used to make precise estimates.[55]

---

[52] John H. Cochrane, "Challenges for Cost-Benefit Analysis of Financial Regulation," *The University of Chicago Journal of Legal Studies*, vol. 43 (June 2014), pp. S100-S102.

[53] John C. Coates IV, "Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications," *Yale Law Journal,* vol. 124 (2015), pp. 1003-1011.

[54] Jeffrey N Gordon, "The Empty Call for Benefit-Cost Analysis in Financial Regulation," *Columbia Law and Economics Accepted Paper No. 464,* July 2014, pp. 4-8.

[55] John C. Coates IV, "Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications," *Yale Law*
(continued...)

In addition, innovation in finance—unlike innovation in industries using physical equipment and chemical processes—faces few physical constraints, possibly allowing the financial system to change more quickly than other industries. Therefore, estimating how a regulation implemented today will affect markets years in the future is challenging.[56] For example, in the years leading up to the financial crisis, private label sub-prime mortgage securitizations and collateralized debt obligations grew very rapidly and to a level of importance in the financial system that would have been difficult to have foreseen when many regulations were being developed.

Another confounding factor in financial CBA is that for many financial regulation objectives there is not always consensus about whether outcomes are benefits or costs. For example, most agree improved health outcomes are beneficial, and increased consumer prices and industry cost should be counted as costs. However, the cost-benefit tally for financial regulation is sometimes not as clear cut. If a consumer protection provision is expected to reduce a certain kind of high-interest-rate lending, experts might reasonably argue over to what degree this is a benefit versus a cost; it is a benefit to the extent it reduces an abusive practice, but a cost to the extent it reduces the availability of a needed credit source. Often such a lack of clarity arises because the effects of financial regulation often consist largely of wealth transfers between various groups—such as transfers between lenders and borrowers or between businesses seeking to raise capital and investors. CBA is a tool most often used to measure the *net* economic effects, and economic transfers between groups are typically a secondary concern.[57]

Proponents of greater agency discretion argue that placing more stringent requirements on financial regulators for conducting CBAs could potentially make issuing regulations more costly and time consuming. Those proponents argue that increasing CBA requirements could lead agencies to block or delay the issuance of individual regulations, and that over time, this could ultimately result in less stringent regulation.[58]

Proponents of agency discretion further assert that CBAs involving such a high degree of uncertainty and contestable assumptions would not discipline agencies. Instead of increasing accountability and regulatory efficiency, they argue CBAs could disguise agency judgement as objective, scientific measurement. Instead of providing an authoritative rationale for a regulation, they argue requirements would provide an opportunity for parties aiming to protect their own interests—not social welfare—to challenge certain beneficial regulations by offering competing but similarly subjective CBAs.[59]

## Arguments That Stricter Requirements on Financial Regulators Are Needed

In contrast, some observers believe that regulatory analysis requirements for financial regulators are not stringent enough. Proponents of increased CBA argue that the challenges facing financial

---

(...continued)

*Journal*, vol. 124 (2015), pp. 999-1001.

[56] Ibid, pp. 1002-1003.

[57] John H. Cochrane, "Challenges for Cost-Benefit Analysis of Financial Regulation," *The University of Chicago Journal of Legal Studies*, vol. 43 (June 2014), pp. S87-S92.

[58] See, for example, David M. Driesen, "Is Cost-Benefit Analysis Neutral," *University of Colorado Law Review*, vol. 335 (2006).

[59] John C. Coates IV, "Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications," *Yale Law Journal*, vol. 124 (2015), pp. 898-902.

regulators are not substantively more difficult than those facing other regulators when performing CBA. They note that all regulation elicits uncertain human behavioral responses.[60] For example, the direct effects of antitrust regulation—where CBA plays an important role—similarly are almost entirely based on the reaction of firms, consumers, and markets. They also challenge the claim that financial innovation is especially rapid compared with other industries, citing the rapid advances in agriculture and pharmaceuticals. In addition, the largest financial regulation effects may actually be easier to monetize because they largely involve changes in monetary transactions rather than health or environmental outcomes that involve assigning a dollar value to nonmarket outcomes.[61]

Proponents of stricter requirements also take issue with the argument that the centrality of finance to the economy represents a reason for exemption from CBA requirements. First, they again disagree that estimating financial effects is uniquely and prohibitively complex, noting the sophistication of CBA performed by other regulators. Next, they argue that the potential to cause very large effects across the entire economy *increases* the importance of CBA in financial regulation, because implementing harmful financial regulation is more consequential than if the industry were more peripheral to the economy and had small economic effects.[62]

Proponents further assert that financial regulation CBA seems to face such difficult challenges because it has been exempt from certain requirements and oversight. Other regulators—once faced with similar problems—have overcome challenges because requirements spurred them to develop agency expertise and methods for performing CBA. They argue that if faced with similar requirements financial regulators, experts, and consultants would similarly devise solutions.[63] Some academics have already started to propose methods to address questions specific to the financial industry.[64]

Furthermore, CBA's proponents argue uncertainty and imprecision are not valid reasons for foregoing financial CBA. They note that most CBAs involve some degree of uncertainty and assumptions. Nevertheless, by requiring agencies to perform the analysis, the assumptions used in evaluating the regulation are articulated and transparent, and their merits can be evaluated. Even if estimated outcomes fall over a wide range of values, an analysis can still make an assessment of the likelihood a regulation will be beneficial and how its costs can be minimized. In these ways, they argue uncertain CBAs can play an important role in showing when a proposed regulation is hard to justify or easy to defend. Proponents argue CBAs—despite possible limitations—are the best alternative for identifying good and bad regulations and have rightly become an important and often required part of rulemaking. For these reasons, they assert financial regulators should face requirements similar to those facing regulators of other industries.[65]

---

[60] Cass R. Sunstein, "Financial Regulation and Cost-Benefit Analysis," *Yale Law Journal Forum*, January 22, 2015, pp. 263-267.

[61] Eric A. Posner and E. Glen Weyl, "Cost-Benefit Analysis of Financial Regulations: A Response to Criticisms," *Yale Law Journal Forum*, January 22, 2015, pp. 246-257.

[62] Ibid.

[63] Richard L. Revesz, "Cost-Benefit Analysis and the Structure of the Administrative State: The Case of Financial Services Regulation," *Yale Journal of Regulation* (forthcoming), Vol. 34, No. 2 (2017), pp. 1-44.

[64] Eric A. Posner and E. Glen Weyl, "Benefit-Cost Analysis for Financial Regulation," *American Economic Review*, Vol. 103, No. 3 (2013), pp. 1-5.

[65] Cass R. Sunstein, "Financial Regulation and Cost-Benefit Analysis," *Yale Law Journal Forum*, January 22, 2015, pp. 263-267.

# Selected CBA Legislation

A number of bills have been introduced and seen action in recent Congresses that would impose additional regulatory impact analysis requirements on financial regulators, including bills that would impose more stringent CBA requirements. Examples include bills that would impose certain requirements on all agencies, including the financial regulators; bills that address independent or financial regulators specifically; and bills affecting only one financial regulator.[66]

## 115th Congress

- The Regulatory Accountability Act (H.R. 5) passed the House on January 11, 2017. The bill would make several changes to the rulemaking process of all agencies by amending the Administrative Procedure Act. Among the changes, agencies would have to consider alternatives to the new regulation and the potential costs and benefits of the alternatives. The bill would extend requirements for CBA to all agencies, including independent regulatory agencies.
- The OIRA Insight, Reform, and Accountability Act (H.R. 1009) passed the House on March 1, 2017. The bill, among other measures, would codify into law OIRA authority of reviewing agency CBA in rulemaking. This authority would also be extended to independent regulatory agencies.
- The SEC Regulatory Accountability Act (H.R. 78) passed the House on January 12, 2017. The bill would impose additional cost-benefit requirements for the SEC, would specify parameters and considerations that must be part of the analysis, and would require the SEC to retrospectively assess the impact of adopted regulation.
- The CFTC Commodity End-User Relief Act (H.R. 238) passed the House on January 12, 2017. The bill would expand the number of considerations that CFTC is statutorily required to include in its CBAs from 5 to 12. The additional considerations include the cost of compliance with the regulation and alternatives to direct regulation.

## 114th Congress

- The Independent Agency Regulatory Analysis Act of 2015 (S. 1607) would have authorized the President to subject independent regulatory agencies to CBA requirements that exist in executive order—such as EO 12866. Notably, this would include the E.O. 12866 requirement that major rules be submitted for OIRA review with an initial cost and benefit assessment.
- Section 612 of the Financial CHOICE Act of 2016 (H.R. 5983) would have required financial regulators to perform certain analyses as part of the rulemaking process, including a quantitative and qualitative assessment of all anticipated direct and indirect costs and benefits of the regulation. Proposed rules found to have quantified costs greater than quantified benefits would require a congressional waiver before being implemented.

[66] This list is not comprehensive but rather a sample of representative bills.

- Bills that would have imposed new analysis requirements on individual financial regulators include the Federal Reserve Accountability and Transparency Act of 2015 (H.R. 113), the Fed Oversight Reform and Modernization Act (H.R. 3189), and the CFPB Dual Mandate and Economic Analysis Act (H.R. 5211).

# Conclusion

Congress likely will continue to face questions over what appropriate CBA requirements for financial regulators should be. A reasoned and systematic examination of likely consequences of a regulation is a useful practice to ensure good and avoid bad regulation. However, calibrating requirements to reach this outcome is difficult. Excessively lenient requirements could allow bad regulation to be implemented, because regulators could promulgate regulations without due consideration of their likely effects. On the other hand, excessively stringent requirements could block good regulation from being implemented, because the time and resources required to perform the analysis could make the cost to regulators prohibitively high. The calibration is complicated by the difficulties and uncertainties involved in performing CBA. Additional lack of clarity is involved in financial regulation, because experts disagree over whether CBA is especially difficult and uncertain in that field. These factors suggest that the question of what CBA requirements financial regulators should face may not be easily settled.

## Author Contact Information

David W. Perkins
Analyst in Macroeconomic Policy
dperkins@crs.loc.gov, 7-6626

Maeve P. Carey
Specialist in Government Organization and Management
mcarey@crs.loc.gov, 7-7775