New Economic Review Requirements

EO 19 requires new economic information and data to be compiled by each regulatory agency/entity as part of the regulatory review process. This includes:

- cost-benefit analysis,
- impact on local partners,
- economic impacts on families,
- regulatory impacts on small businesses, and
- count of regulatory requirements imposed by the regulation

Existing Economic Impact Analysis compared to New Cost Benefit Analysis

While an economic impact analysis is actually intended to be broader than a traditional cost benefit analysis, the limited time-frame for review by the Department of Planning and Budget (DPB) and the lack of standardized economic data has not provided the public or the Commonwealth with thorough economic information.

The new economic review requirements, particularly in terms of Cost Benefit Analysis, require the agency to compare the economic data between different policy options. This incorporates true economic analysis by the originating agencies, which have more direct knowledge of the impacts of their regulations, and thus should be more complete and robust than DPB's analysis alone.

Cost Benefit Analysis

The Commonwealth has a long-standing policy that regulations shall be designed to achieve their intended objective in the most efficient, cost effective manner. In furtherance of this policy, a cost benefit analysis is performed to identify the key effects—both positive and negative—of various alternatives for a rule. Cost benefit analysis informs the agency and the public whether the benefits of a rule are likely to justify the costs, or determines which of various possible alternatives would be the most cost effective. EO 19 does not require the benefits to outweigh the costs, but it does require a more complete consideration of quantitative and/or qualitative factors.

To accomplish this, the likely outcomes of the rule are determined by the agency for alternative approaches, such as if no regulation were implemented or if a different regulation were implemented. Next, the positive outcomes (benefits) are weighed against the negative outcomes (costs) of a regulatory action to determine whether and to what degree a regulation is beneficial. This analysis is represented in either a cost benefit calculation and/or a qualitative description.

There can be many challenges and constraints that limit a cost benefit analyses, including limited data availability, limited statutory discretion, insufficient analytical models, and use of sensitive information (such as proprietary information or personally identifiable information).

> **Analysis:** Generally speaking, agencies must conduct a cost/benefit calculation on multiple alternatives, including (a) no change to the status quo, (b) the primary option, and (c) at least one other alternative approach to accomplishing the objectives. These

alternative approaches may include the use of reasonably available alternatives in lieu of regulation, or information disclosure requirements or performance standards instead of regulatory mandates. This comparative analysis is not necessary if the agency cannot exercise discretion and therefore no options are available (because of statutory or federal requirements, or circumstance) but should still be completed for the primary option. In all cases, however, agencies must provide a qualitative description of the cost benefit information, including its source.

Impact on Local Partners

An unfunded mandate is when a local partner (such as a local or tribal government, or other local or regional authorities or commissions) must perform certain actions or offer certain programs but does not receive any state funds for the implementation. An unfunded mandate can also occur if resources (such as funds or nonmonetary assistance) are reduced to local partners but the underlying regulatory requirements are still in place.

When calculating an unfunded mandate a number of factors must be considered such as: the cost to the local partner of the new program or new regulatory requirements, whether any state assistance provided covers the underlying costs, and whether there are existing assistance programs that can offsets the new costs. To identify this information for regulations with potential fiscal impact, agencies should share a copy of the proposed regulatory change with local or tribal governments, including planning districts or other representatives of local partners, prior to submission of the regulation for executive branch review. Agencies should also provide the projected costs and savings to local partners to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

Analysis: Quantify the direct costs and benefits, and describe any indirect costs and benefits, for local partners likely to be affected by the regulation in terms of real monetary costs and full-time equivalent positions (FTEs). Identify the amount of assistance provided for compliance in both funding and assistance. Provide a qualitative description of the cost benefit information, including its source. If local partners are not affected, include a specific statement to that effect and a brief explanation of the rationale.

Economic Impacts on Families

While negative economic impacts affect all individuals, the Commonwealth has long recognized that regulations may have a more profound negative impact on family formation, stability, and autonomy. This is due in part to the number of wage earners per minors in the family, and the likelihood that food, energy, housing, transportation, healthcare and education costs Are typically greater for a family than an individual. Despite the provisions of § 2.2-606 of the Code of Virginia, the costs of government programs on families have not been routinely considered in the past.

Analysis: Quantify the direct costs and benefits, and describe any indirect costs and benefits, to a typical family of three (average family size in Virginia according to the U.

S. Census) for any regulation that increases the direct or indirect costs of food, energy, housing, transportation, healthcare, and education. Provide a qualitative description of the cost benefit information, including its source. If families are not affected, include a specific statement to that effect and a brief explanation of the rationale.

Regulatory Impacts on Small Businesses

More than 45% of U.S. GDP is driven by the small business sector. Historically, small businesses have been responsible for two-thirds of all net new jobs. Federal regulations alone are estimated to cost the American economy as much as $1.9 trillion a year in direct costs, lost productivity, and higher prices. According to the U.S. Chamber of Commerce, the costs to smaller businesses with 50 employees or fewer are nearly 20% higher than the average for all firms. To minimize these impacts, and consistent with § 2.2-4007.1 of the Code of Virginia, agencies shall prepare a regulatory flexibility analysis that includes the use of alternative regulatory methods in order to minimize the adverse impact on small businesses.

Analysis: Quantify the direct costs and benefits, and describe any indirect costs and benefits, imposed on small businesses. Include a qualitative discussion of any equally effective alternatives that would make the regulatory burden on small business more equitable compared to other affected business sectors, and how those alternatives were identified. Provide a qualitative description of the cost benefit information, including its source. If small businesses are not affected, include a specific statement to that effect and a brief explanation of the rationale. For purposes of this analysis, "small business" means the same as that term is defined in § 2.2-4007.1.

List of Regulatory Requirements

In 2018 HB 883 required agencies to enumerate the number of regulatory requirements included in each regulation. The legislation defined "regulatory requirement" as any action required to be taken or information required to be provided in accordance with a statute or regulation in order to access government services or operate and conduct business. As part of this effort, many agencies completed a "regulatory catalog" that is available on the Virginia Regulatory Town Hall that includes the number of regulatory requirements by Chapter and Section of the Virginia Administrative Code (VAC).

Analysis: Calculate the number of regulatory requirements included in the new regulation, including: (a) the total number of requirements in any affected Chapter of the VAC, regardless of whether they are being amended (b) the net change in the number of discretionary requirements per Chapter, and (c) the net change in the number of mandatory requirements per Chapter. If the new regulation replaces an existing regulation, calculate the net change in requirements in each category.