

OECD Regulatory Policy Outlook 2015

Country profile

UNITED STATES



Access links

- **OECD Regulatory Policy Outlook 2015:** www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm
- **Indicators of Regulatory Policy and Governance and the underlying data:** www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm
- **Regulatory policy in the United States:** www.oecd.org/regreform/regulatory-policy/united-states.htm
- **Regulatory Policy Outlook country profiles:** www.oecd.org/regreform/regulatory-policy/outlook-country-profiles.htm
- **OECD regulatory policy website:** www.oecd.org/governance/regulatory-policy/

Overview

The Administrative Procedure Act governs the rule-making process in the United States, requiring agencies to provide public notice and seek comment prior to issuing new regulations or revising existing ones. Specifically, agencies are required to publish a regulatory proposal that provides sufficient information—including the evidence on which the proposal is based and the regulatory text with which the public would need to comply—to apprise stakeholders of the issues involved so that they may present responsive data or arguments. Agencies must then explain how they addressed significant issues raised by commenters. Together with the proposal and supporting analyses, the comments form the public record that serves as the rational basis for each final regulation. The APA also allows for judicial review of the final rule to ensure compliance with this process.

Under Executive Orders 12866 (1993) and 13563 (2011), the Office of Management and Budget (OMB) within the Executive Office of the President conducts a centralised review of draft, significant regulations before they are proposed by agencies and again before they are finalised. OMB reviews draft regulations to determine that *i)* their expected costs and benefits are carefully considered, *ii)* they reflect the President's priorities, *iii)* agencies consider a range of reasonable alternatives, and *iv)* appropriate interagency co-ordination occurs. OMB can “return” draft regulations to agencies for their reconsideration.

The evaluation of regulatory costs and benefits is well developed in the United States. The extent of the evaluation is generally proportional to the impacts of the regulatory proposal. Agencies evaluate the costs and benefits of all significant regulatory proposals, with full-blown RIAs required for proposals with annual impacts over USD 100 million. The Regulatory Flexibility Act imposes additional analytic and consultation requirements if there is “a significant economic impact on a substantial number of small regulated entities.”

Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” institutionalises *ex post* evaluation in the United States. The new effort on *ex post* evaluation should assess the extent to which the policy outcome has been achieved, and given the advanced state of the RIA system, it could also validate the *ex ante* assessment.

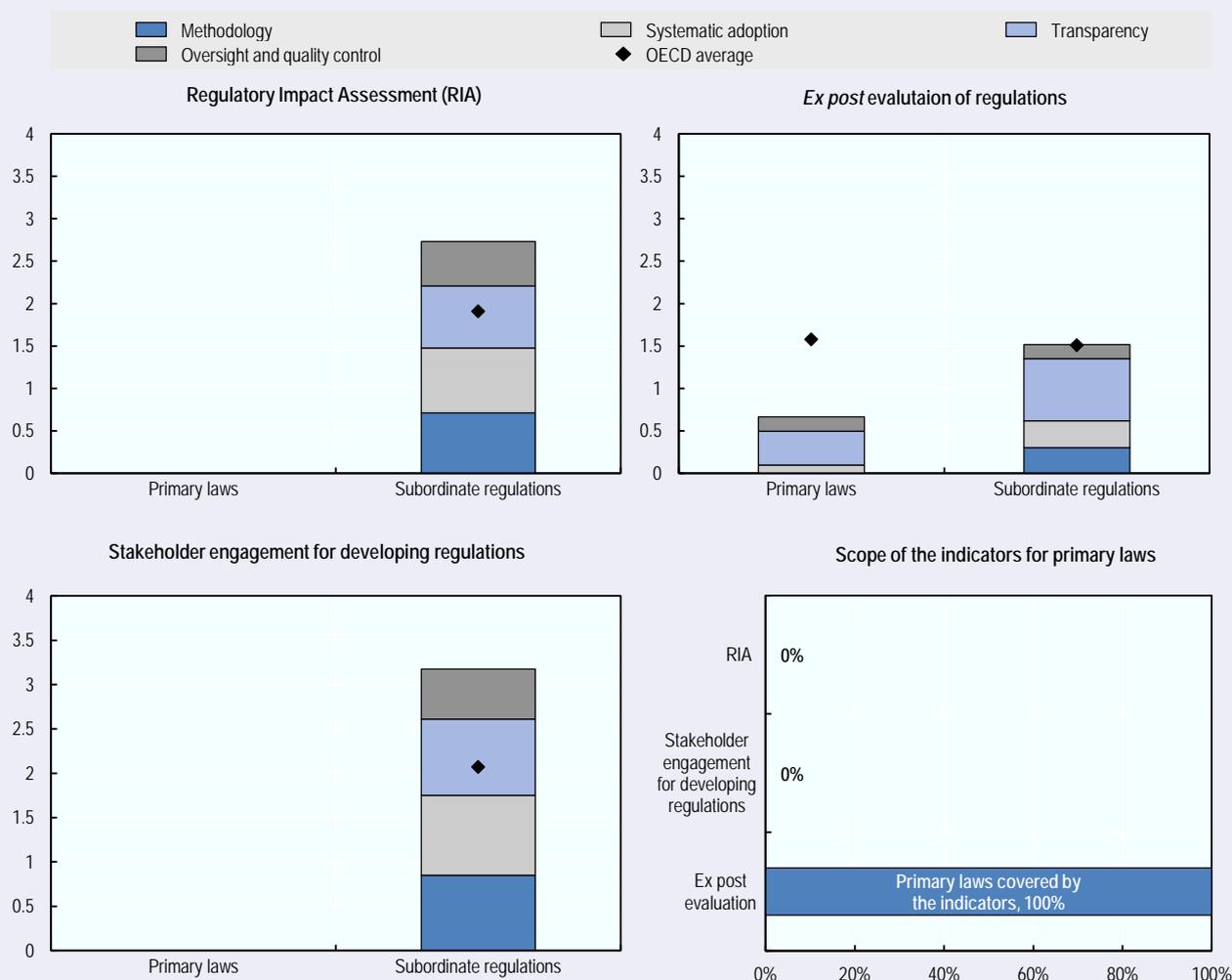


Spotlight: Behavioural policy making

Executive Order 13563 introduced behavioural economics in the United States. Behaviourally informed initiatives have simplified or standardised consumer information to improve outcomes for citizens. For instance, the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 strengthened consumer protection following the financial crisis. Based on academic evidence of consumer behaviour toward credit, it banned certain types of “hidden” fees and mandated lenders to supply more helpful and timely information. It forced lenders to decline transactions that would exceed the credit limit rather than to charge a fee. The Act also required lenders to include on bills an explicit calculation of the time and cost of repaying the balance through minimum monthly repayments, and a similar calculation for the cost of repaying over 36 months.

Indicators presented on RIA and stakeholder engagement only cover processes that are carried out by the executive. As the executive does not initiate any primary laws in the United States, results for RIA and stakeholder engagement are only presented for subordinate regulations and do not apply to primary laws. There is no mandatory requirement in the United States for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by Congress

Indicators of Regulatory Policy and Governance 2015



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in the United States no primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover 0% of primary laws. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Statlink: <http://dx.doi.org/10.1787/888933263385>

Indicators of Regulatory Policy and Governance (iREG)

The three composite indicators provide an overview of a country's practices in the areas of stakeholder engagement, Regulatory Impact Assessment (RIA) and *ex post* evaluation. Each indicator comprises four equally weighted categories:

- Systematic adoption which records formal requirements and how often these requirements are conducted in practice.
- Methodology which gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used.
- Oversight and quality control records the role of oversight bodies and publically available evaluations.
- Transparency records information from the questions that relate to the principles of open government, e.g. whether government decisions are made publically available.



The composite indicators are based on the results of the *OECD 2014 Regulatory Indicators Survey*, which gathers information from all 34 OECD countries and the European Commission as of 31 December 2014. The survey focuses on regulatory policy practices as described in the 2012 *OECD Recommendation on Regulatory Policy and Governance*. The more of these practices a country has adopted, the higher its indicator score. Further information on the methodology is available online at www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Whilst the indicators provide an overview of a country's regulatory framework, they cannot fully capture the complex realities of its quality, use and impact. In-depth country reviews are therefore required to complement the indicators and to provide specific recommendations for reform.

OECD Regulatory Policy Outlook 2015

The *OECD Regulatory Policy Outlook* (www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm) provides the first evidence-based, cross-country analysis of the progress made by OECD countries in improving the way they regulate. Findings are based on the results of the *OECD 2014 Regulatory Indicators Survey*.

Key findings:

- Laws and regulations are essential instruments, together with taxes and spending, in attaining policy objectives such as economic growth, social welfare and environmental protection. OECD countries have generally committed at the highest political level to an explicit whole-of-government policy for regulatory quality and have established a standing body charged with regulatory oversight.
- Implementation of regulatory policy varies greatly in scope and form across countries. While RIA has been widely adopted, few countries systematically assess whether their laws and regulations achieve their objectives. Stakeholder engagement on rule making is widespread in OECD countries, taking place mostly in the final phase of developing regulation.
- The national executive government has made important progress over the last decade to improve the quality of regulations. Parliaments, regulatory agencies and sub-national and international levels of government need to be more engaged to ensure that there are evidence-based and efficient laws and regulations for stimulating economic activity and promoting well-being.
- The impact of regulatory policy could be further improved by addressing shortcomings in the implementation and enforcement of regulations and by considering new approaches to regulatory design and delivery such as those based on behavioural economics.

Contact information:

Christiane Arndt, Head of Programme, Measuring Regulatory Performance, christiane.arndt@oecd.org and Céline Kauffmann, Deputy Head of Division, Regulatory Policy, celine.kauffmann@oecd.org