



# United States

Indicators of Regulatory Policy and Governance 2021





## Overview and recent developments

The Administrative Procedure Act governs the rule-making process in the US, requiring agencies to provide public notice and seek comment when proposing new regulations or revising or repealing existing ones. Agencies must consider the comments and in the final rule explain how they addressed significant issues raised by commenters. A final rule is subject to judicial review to ensure it conforms with legal requirements, including those concerning notice and comment. The evaluation of regulatory costs and benefits is well developed in the US RIAs are required for all significant regulatory proposals, and full RIAs are required for proposals with annual impacts over USD 100 million. *Ex post* evaluation of subordinate regulations has been mandatory since 2011. The US could benefit from strengthening the link between *ex ante* and *ex post* evaluation, for example by requiring regulators to identify a process for assessing progress in achieving a regulation's goals as part of RIA or by mandating a post-implementation review for regulations exempted from RIA.

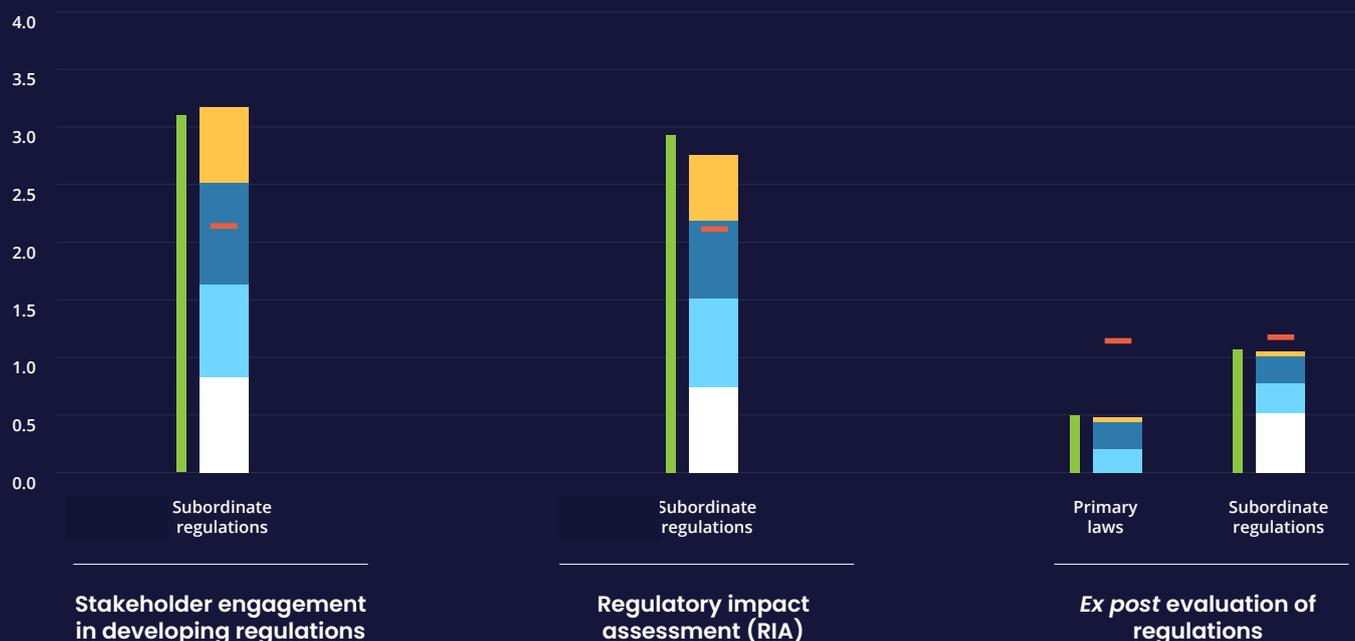
The Office of Information and Regulatory Affairs (OIRA) located within the Executive Office of the President is the central regulatory oversight body of the United States. It scrutinises the quality of significant regulations and RIAs and can return draft regulations to agencies for reconsideration if their quality is deemed inadequate. OIRA also co-ordinates the application of regulatory management tools across government, reports to Congress on their impacts, provides guidance and training on their use and identifies areas where regulation can be made more effective. Its mandate has been updated to expand OIRA's oversight remit.

The Trump administration included a number of regulatory policy changes. A stock-flow linkage rule introduced in 2017 requires agencies to issue two deregulatory actions for every regulatory action, in a way that the total cost of regulations does not exceed the agency's Fiscal Year Cost Allowance, as approved by the Office of Management and Budget. Executive Order 13891 required "economically significant" guidance documents to be subject to formal review and be centrally published. Related Guidance on Compliance with the Congressional Review Act empowered OIRA to review independent federal agencies' regulatory actions and rules and related analysis that are not submitted to OIRA through the centralised review process under Executive Order 12866. The Biden administration revoked all of these changes through Executive Order 13992, and issued a memorandum calling for the Office of Management and Budget to undertake a process for modernising regulatory review. The review is expected to include suggestions on how regulatory review processes can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations.

As the executive does not initiate primary laws in the United States, only the scores for subordinate regulations are displayed for stakeholder engagement and RIA. There is no mandatory requirement for consultation with the general public, RIAs, or *ex post* evaluation for primary laws initiated by Congress.

# Indicators of Regulatory Policy and Governance (iREG): United States, 2021

● Methodology 
 ● Systematic adoption 
 ● Transparency 
 ● Oversight and quality control 
 ■ Country total, 2018 
 — OECD average, 2021



Notes: The more regulatory practices as advocated in the [OECD Recommendation on Regulatory Policy and Governance](#) a country has implemented, the higher its iREG score. The indicators 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.

Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, <http://oe.cd/iereg>.

## United States: Transparency throughout the policy cycle



### Inform the public in advance that:

A public consultation is planned to take place	<b>Some</b>
Regulatory impact assessment (RIA) is due to take place	<b>Yes</b>
<i>Ex post</i> evaluations are planned to take place	<b>Never</b>



### Consult with stakeholders on:

Draft regulations	<b>All</b>
Evaluations of existing regulations	<b>Some</b>



### Publish online:

Ongoing consultations*	<b>All</b>
Views of participants in the consultation process	<b>Yes</b>
RIAs	<b>All</b>
Evaluations of existing regulations	<b>No</b>



### Policy makers use:

Interactive website(s) to consult with stakeholders	<b>Yes</b>
Website(s) for the public to make recommendations on existing regulations	<b>No</b>



### Policy makers provide a public response to:

Consultation comments	<b>Yes</b>
Recommendations made in <i>ex post</i> evaluations	<b>Never</b>

\* Publish on a single central government website.

Note: As the executive does not initiate any primary laws in the United States, this data reflects practices regarding subordinate regulations.

Source: Indicators of Regulatory Policy and Governance Survey 2021, <http://oe.cd/iereg>.

