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CONGRESSIONAL BUDGETING

INTRODUCTION TO A REGULATORY BUDGET

A HOUSE BUDGET COMMITTEE
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ABSTRACT

The exercise of government in America has become much more a matter of regulation than of legislation. In 2015, Federal agencies issued nearly 30 times as many regulations as laws that were enacted. Thus Congress cedes growing shares of its authority to an unelected fourth branch of government with ever-increasing control over Americans' lives.

The cost of regulations has been estimated at about $2 trillion a year, and one study has shown that a 10-percent increase in the quantity of Federal regulations is associated with a 0.7-percent increase in prices. The current system of cost-benefit analysis used by the administration is wildly inaccurate and prone to data manipulation. The government's estimates, compared with the experience of those subject to regulation, paint two different pictures. In addition, regulations have effects on individual and property rights that are not readily quantifiable. Despite these facts, Congress has no systematic means of tracking, and if possible restraining, this expansion of the regulatory state. A regulatory budget may not be a panacea, but it could be an important start toward gaining control of the problem.

THE PROLIFERATION OF RULES AND REGULATIONS

Delegation of Legislative Authority

The exercise of government in America has become much more a matter of regulation than of legislation. In 2015, Congress and the President enacted 115 Federal laws. In the same year, Executive Branch agencies issued 3,410 rules. All Federal agencies also issue guidance documents that can place a substantial cost on individuals and businesses, but have not been passed or approved by Congress. The United States *Code of Federal Regulations* contains more than 175,000 pages of rules and mandates in 235 volumes.[1]

According to one estimate, the Affordable Care Act alone has spawned more than 11 million words of regulation, 30 times as many as appear in the legislation itself.[2] The health program's implementation has resulted in 177.9 million annual hours of regulatory compliance paperwork, $37.1 billion of regulatory compliance costs affecting the private sector, and $13 billion in regulatory compliance costs on the States.[3] A recent analysis also found physician practices in four common specialties annually spend 785 hours per physician, and $15.4 billion, dealing with reporting requirements mandated by the government.[4]

According to a study published by the Mercatus Center at George Mason University, nearly every four-year presidential term is accompanied by a visible increase in the number of additional regulations. As a result, regulatory restrictions have nearly doubled in the past four decades, from about 580,000 when President Carter took office to roughly 1,070,000 in 2014.[5] President Obama oversaw the greatest increase in regulatory restrictions in a single term, his first, and has far surpassed President George W. Bush for the greatest total increase in restrictions since 1976 (see Figure 1, next page).[6] Since President Obama's inauguration in 2009, the administration has issued more than 556,000 pages of regulations and accompanying documentation in the *Federal Register*, including 81,910 pages in 2015.[7] The Obama Administration has imposed more than $728 billion in additional Federal regulatory costs, with more than $100 billion in further costs proposed since the beginning of 2015. At the end of 2015, 267 of 390 required rulemakings (68.5 percent) had received finalized rules, while 40 (10.3 percent) had

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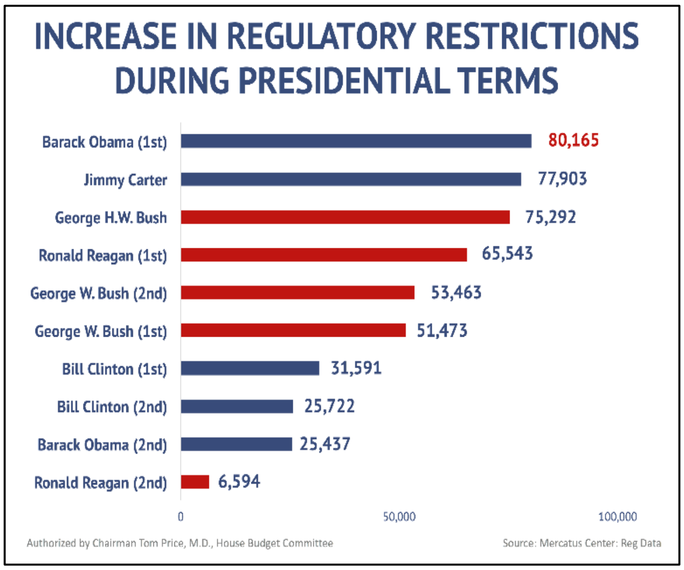
[1] Committee on the Budget, U.S. House of Representatives, Concurrent Resolution on the Budget – Fiscal Year 2017, Section 605: https://www.gpo.gov/fdsys/pkg/BILLS-114hconres125rh/pdf/BILLS-114hconres125rh.pdf.
[2] Penny Starr, "11,588,500 Words: Obamacare Regs 30x as Long as Law," cnsnews.com, 14 October 2013.
[3] Committee on the Budget, U.S. House of Representatives, op. cit.
[4] Lawrence P. Casalino, David Gans, Rachel Weber, Meagan Cea, Amber Tuchovsky, Tara F. Bishop, Yesinia Miranda, Brittany A. Frankel, Kristina B. Ziehler, Meghan M. Wong, and Todd B. Evenson, "U.S. Physician Practices Spend More Than $15.4 Billion Annually To Report Quality Measures," *HealthAffairs*, Vol. 35 No. 6, June 2016.
[5] Patrick A. McLaughlin and Oliver Sherouse, "The Accumulation of Regulatory Restrictions Across Presidential Administrations," The Mercatus Center at George Mason University, 3 August 2015: http://mercatus.org/publication/accumulation-regulatory-restrictions-across-presidential-administrations.
[6] Ibid.
[7] Committee on the Budget, U.S. House of Representatives, op. cit.

received proposed rules. Rules had not yet been proposed for the remaining 83 (21.3 percent) rulemaking requirements.[8]

The increase in regulation also expands the Executive Branch's population of unelected, and hence unaccountable, "experts" and bureaucrats making rules under which Americans must live. "Whether the regulatory agencies are 'executive agencies,' 'executive departments,' 'federal departments,' or 'independent regulatory commissions' is irrelevant. In whatever form they may take, the myriad agencies and departments that make up this administrative state operate as a 'fourth branch' of government that typically combines the powers of the other three and makes policy with little regard for the rights and opinions of citizens."[9]

Figure 1



Yet with all this regulatory proliferation, Congress has no systematic means of tracking and limiting these rules, which impose significant costs on the economy. Consequently, policymakers for years have sought ways of budgeting regulations. Although it seems obvious that some kind of regulatory budget could help address the problem, establishing a budget for regulation introduces its own set of complexities. Still, it can change behaviors in any given agency that lead to the growth of regulations, and even create incentives to limit them. "First, the agency would avoid new regulations that would not achieve high benefits relative to their budgetary cost. Second, the agency would have incentive to eliminate old regulations that are found to be ineffective or intolerably inefficient. In other words, a regulatory budget process would resemble an error-correction process: it would lead to fewer new errors as well as aid in the identification and correction of existing ones."[10]

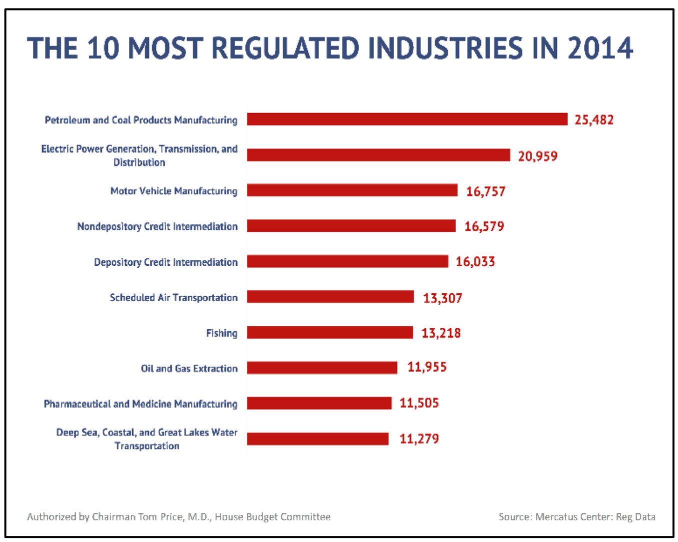
[8] Davis, Polk &Wardwell LLP, Dodd-Frank Progress Report, Fourth Quarter 2015: http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report/.
[9] Joseph Postell, *From Administrative State to Constitutional Government*, Heritage Foundation Special Report No. 116, 7 December 2012, p. 5: http://www.heritage.org/research/reports/2012/12/from-administrative-state-to-constitutional-government.
[10] Patrick A, McLaughlin, *Regulatory Budgeting as a Solution to the Accumulation of Regulatory Errors*, statement before the Committee on the Budget, U.S. House of Representatives, 7 July 2016.

Direct Costs of Regulation

Among the most regulated industries are those involving energy production and motor vehicle manufacturing. Pharmaceutical and medical manufacturing also contend with thousands of Federal regulatory restrictions (see Figure 2).

The highest regulatory costs come from rules issued by the Environmental Protection Agency [EPA]. Among major new and proposed EPA regulations are those that would vastly expand the Agency's control of land use through Clean Water Act permitting programs, commonly referred to as the Waters of the United States [WOTUS] rule; limit development in counties in nearly every State under Clean Air Act ozone regulations; and impose a de-facto ban on new coal-fired power plants. The Heritage Foundation found a phase-out of coal would cost 600,000 jobs by the end of 2023, resulting in an aggregate decrease in gross domestic product [GDP] of $2.23 trillion over the entire period and reducing the income of a family of four by $1,200 per year. Of the lost jobs, 330,000 will come from the manufacturing sector, with California, Texas, Ohio, Illinois, Pennsylvania, Michigan, New York, Indiana, North Carolina, Wisconsin, and Georgia seeing the highest job losses.[11]

Figure 2



The Dodd-Frank banking regulations have resulted in more than $39.3 billion in regulatory compliance costs and have imposed on job creators as much as 76.6 million hours of proposed and final regulatory compliance paperwork. Large banks such as Citi, Bank of America, and J.P. Morgan are able to adjust to the increase in compliance costs. Small and community financial institutions bear a larger cost and do not benefit from the same economies of scale. Similarly, while larger companies can afford the army of lawyers often needed to comply with government regulations, smaller companies cannot. The small- and medium-size businesses bear the greater burden of regulatory costs.[12]

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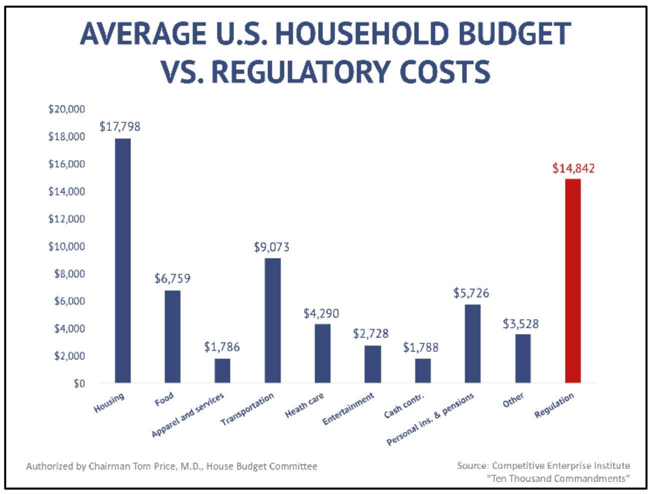
[11] Committee on the Budget, U.S. House of Representatives, op. cit.
[12] Donald J. Boudreaux, editor, *What America's Decline in Economic Freedom Means for Entrepreneurship and Prosperity*, The Fraser Institute, Vancouver, British Columbia, 16 April 2015, pp. 127-129:

Mercatus Center scholars have also shown a correlation between regulations and agency budgets. From 1975 through 2014, the simple correlation between the total of all regulatory restrictions and the total of all agency budgets equals 0.91, or nearly a one-to-one match. The correlation begs the question of whether higher agency budgets inevitably lead to increased regulations.[13]

THE DAMPENING EFFECT ON THE ECONOMY

The estimated economy-wide costs of Federal regulations are as high as $1.88 trillion to $2.03 trillion per year. This equals roughly $15,000 per United States household, or 30 percent of average household income (see Figure 3); exceeds both individual and corporate Federal income tax collections; and exceeded 11 percent of U.S. GDP in 2015.[14]

Figure 3



When the costs of doing business increase, those costs are passed on to consumers in the form of higher prices. One study has shown that a 10-percent increase in the quantity of Federal regulations is associated with a 0.7-percent increase in prices. The effect is worse for lower-income households, who spend more of their income in heavily regulated sectors, including housing, electricity, telephone service, and transportation.[15]

According to the Cumulative Cost of Regulations report from the Mercatus Center, if regulation had been held constant at 1980 levels, by 2012 the U.S. economy would have been about 25 percent larger than it actually was. Said another way, the economy was $4 trillion smaller in 2012 than it would have been without the proliferation of Federal

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https://www.fraserinstitute.org/studies/lesson-canada-economic-freedom-and-entrepreneurship-critical-economic-growth.

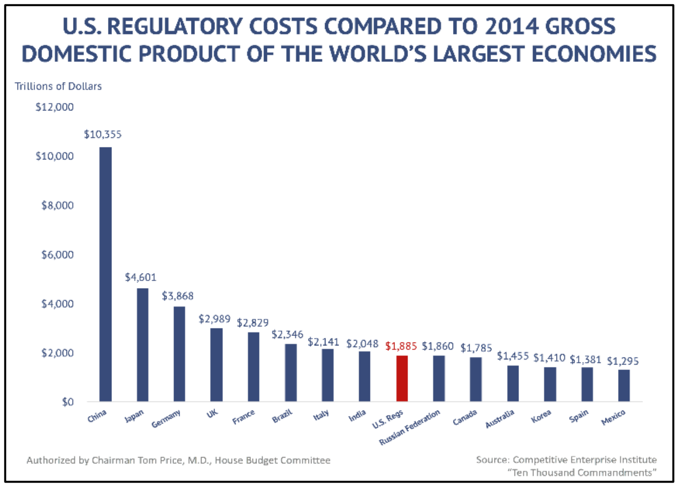
[13] Patrick A. McLaughlin and Oliver Sherouse, "The High Correlation Between Agency Budgets and Agency Regulations," the Mercatus Center at George Mason University, 29 September 2015: http://mercatus.org/publication/high-correlation-between-agency-budgets-and-agency-regulations.

[14] Committee on the Budget, U.S. House of Representatives, op. cit.

[15] Dustin Chambers and Courtney A. Collins, *How Do Federal Regulations Affect Consumer Prices: An Analysis of the Regressive Effects of Regulation*, the Mercatus Center at George Mason University, February 2016, p. 20: http://mercatus.org/sites/default/files/Chambers-How-Regs-Affect-Prices-v2.pdf.

regulations.[16] If regulatory costs represented an independent economy, the estimated annual level of these costs would qualify as one of the world's top 10 economies, ranking between India and Russia, equaling roughly one-half of Germany's economy and 40 percent of Japan's (see Figure 4).[17]

Figure 4



Although a cause-and-effect relationship would be difficult to demonstrate, the sharp increase in Federal regulatory costs has accompanied the weakest recovery from an economic recession since World War II.[18] The U.S. has experienced zero real wage growth since 2007. Inflation-adjusted GDP was just 0.8 percent in the first quarter of 2016, and 1.1 percent in the second quarter.[19] The current Blue Chip consensus of private-sector economic forecasters sees annual growth of just 1.5 percent this year, which would be the worst performance since 2009. The Congressional Budget Office [CBO] projects real GDP growth of 1.9 percent this year and an average of 2.0 percent per year over the next decade.[20] Job growth moderated to 151,000 in August. So far this year, monthly job gains have averaged 182,000, down from 229,000 per month last year. The headline unemployment rate remained steady at 4.9 percent in August, up slightly from a recent low of 4.7 percent in May. The broader "under-employment rate" – which includes those working part-time because they cannot find a full-time job and those who have given up searching for work – stands at 9.7 percent, nearly double the commonly reported unemployment rate.[21]

Individuals working part time for economic reasons increased by 113,000 in August to 6.05 million, roughly 45 percent higher than the level seen before the recession.[22] A

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[16] Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, *The Cumulative Cost of Regulations*, the Mercatus Center at George Mason University, April 2016: http://mercatus.org/sites/default/files/Coffey-Cumulative-Cost-Regs-v3.pdf.
[17] Committee on the Budget, U.S. House of Representatives, op. cit.
[18] Ibid.
[19] Bureau of Economic Analysis, U.S. Department of Commerce, news release, 26 August 2016.
[20] Congressional Budget Office, *An Update to the Budget and Economic Outlook: 2016 to 2026*, August 2016.
[21] Bureau of Labor Statistics, *The Employment Situation – August 2016*, 2 September 2016.
[22] Ibid.

number of economists have argued the Affordable Care Act has exacerbated this trend by explicitly providing incentives for part-time work. The labor force participation rate remained steady at 62.8 percent in August, only slightly above the 40-year low of 62.4 percent reached late last year.[23] During this protracted period of slow economic growth and subpar employment opportunities, household income has languished. Real median household income declined by roughly $800 in 2014 (latest year available) to $53,657. That represents a sharp decline of 6.5 percent, or $3,700, since 2007.

HISTORY OF REGULATORY BUDGETING

Past Efforts

Although many blame unelected bureaucrats for imposing such regulatory costs on the economy, others say elected officials bear the responsibility for allowing this trend to occur. They believe a practice of systematic regulatory budgeting would help identify the costs and enable Congress to control them.

The concept of regulatory budgeting has enjoyed bipartisan support.[24] In 1978, Senator Lloyd M. Bentsen (D-TX) and Representative Clarence J. Brown (R-OH) introduced the Federal Regulatory Budget Act (S. 3550, H.R. 1437, 95th Congress). Senator Bentsen hoped his legislation would "force agencies to choose the least costly way of achieving regulatory goals."[25] The legislation would have amended the Congressional Budget Act of 1974 to require Congress to complete an annual regulatory budget by establishing a maximum regulatory compliance cost cap for each Federal agency. The bill also would have established House and Senate rules for legislation that would push an agency over its regulatory budget cap.

The Carter Administration had supporters of regulatory budgeting, and the topic was noted in the 1980 *Economic Report of the President*.[26] Nevertheless, President Carter never submitted legislation to Congress for consideration. President George H.W. Bush endorsed regulatory budgeting in his 1993 budget submission to Congress. His proposal would have provided agencies with regulatory allowances that would be the ceiling for increased regulatory costs imposed by each agency each year. Meanwhile, several members of Congress, including Senator Orrin G. Hatch (R-UT) and Representative Lamar S. Smith (R-TX), introduced legislation implementing a regulatory budget system.

Late in his second term, President George W. Bush required each agency to include in its annual regulatory plan an estimate of aggregate costs for the calendar year.[27] While this may have been a prelude to a regulatory budget, President Obama revoked the order following his inauguration.[28]

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[23] Ibid.
[24] Jeffrey A. Rosen and Brian Callanan, "The Regulatory Budget Revisited," *Administrative Law Review*, American University, Washington School of Law, September 2014, pp. 848-853: http://www.kirkland.com/files/The_Regulatory_Budget_Revisited.pdf.
[25] *Congressional Record*, p. 33,959 (1978).
[26] Council of Economic Advisors, *Economic Report of the President*, January 1980, p. 125: http://www.presidency.ucsb.edu/economic_reports/1980.pdf.
[27] President George W. Bush, Executive Order 13422, 18 January 2007.
[28] President Barack H. Obama, Executive Order 13497, 30 January 2009.

Proposals During the 114th Congress

The fiscal year 2017 House budget resolution (H. Con. Res. 125) includes a section on regulatory budgeting and reform. While past budgets discussed the high costs of regulatory compliance, this is the first time a budget resolution had expressly discussed the need for regulatory budgeting.[29]

Representative B. Mark Walker (R-NC) has introduced H.R. 5319, the Article I Regulatory Budget Act, which has been referred to several House committees, including the Budget Committee. The Senate companion measure is S. 2982, sponsored by Senator Michael S. Lee. This legislation would require the President to submit a projected regulatory budget for the five forthcoming fiscal years. It would amend the Congressional Budget Act to require the Budget Committees to establish, in the budget resolution, appropriate regulatory costs for four consecutive fiscal years. It would also require the CBO to set a regulatory baseline and score each bill for regulatory costs with retrospective reviews. H.R. 5319 creates a point of order against any bill that would cause an agency to breach its regulatory cap. The point of order could be waived only with a three-fifths majority, and automatically defunds enforcement of any rule that breaches an agency's regulatory cost cap.

The Speaker's Task Force report on the economy, released on 14 June 2016, recommends the solution to regulatory burdens is to establish a regulatory budget.[30]

FEATURES OF A REGULATORY BUDGET

What to Measure and How to Measure It? Measurement is the biggest question in regulatory budgeting, and there is little agreement among research organizations or government agencies concerning how to do it. Measurement options include units (individual regulations), economic costs (cumulative economic impact of each regulation), and compliance burdens (how long and how much will it cost for a business to comply with a regulation). No method of measurement is perfect and each comes with unique challenges and tradeoffs. For example, simply counting regulations is the simplest and easiest way to measure them, but it may mix small regulations with larger, more complex rules that have greater economic effects. Conversely, Congress could require the measurement of economic impact and costs and require new regulations to be offset by the elimination of older regulations of equivalent magnitude. This method is much more complicated, however, and the calculations are open to errors if the data are insufficient or if the underlying numbers are based on speculation or conjecture.

Who Does the Measuring? Both Congress and the Executive Branch already have budget analysis operations: CBO, the Office of Management and Budget [OMB] (which includes the Office of Information and Regulatory Affairs [OIRA]), and the Government Accountability Office [GAO]. Many believe responsibility for a regulatory budget should fall to one of these existing agencies, especially CBO. Others have suggested a new entity is needed that is independent of CBO and not weighed down by legacy concerns or potential conflicts of interest.

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[29] Committee on the Budget, U.S. House of Representatives, op. cit.
[30] The Speaker's Task Force, *A Better Way: Our Vision for a Confident America – The Economy*, 14 June 2016, p. 11: http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Economy-PolicyPaper.pdf.

"Two alternative approaches are generally used to overcome potential conflicts of interest that arise surrounding the performance of regulatory analysis. The first is to assign the task of regulatory analysis to a body that has no interest – political, financial, or budgetary – in seeing a regulation pass or fail. The second is to create a process for oversight of the analyses produced by regulatory agencies. If either of these approaches is applied to regulatory budgeting, a second layer of oversight – from the public at large – could be facilitated by the specification of a transparent and replicable methodology that the analyses must follow."[31]

Prospective vs. Retrospective Baselines. Most proposals for regulatory budgeting set a top-line number for regulations. Some also direct Congress to establish regulatory budget sub-allocations for each Federal agency. To accomplish this, CBO or another entity would have to do some retrospective analysis to come up with a reliable baseline that totals the cumulative costs of regulations to date (or over a specified period of time). Similarly, instead of totaling the cumulative costs of regulations up front, Congress could set a prospective cap that limits the cumulative costs of regulations for each fiscal year.

Defining Regulations. The President and agencies issue guidance, memoranda, press statements, and Executive Orders in addition to formal rulemakings. Public notices in the *Federal Register* each year exceed 24,000, compared to 3,400 formal rulemakings annually.[32] These could be either mundane housekeeping items or serious policies issued outside of formal rulemaking procedures that could carry significant regulatory costs.[33] Many believe this guidance also qualifies as regulation and should be included in a regulatory budget.

Filling Up to the Cap. Another question is whether a regulatory baseline represents a floor or a ceiling. As with the fiscal budget, there will always be pressure for agencies to fill regulatory requirements up to the limit. In a perfect world, Congress would reduce the regulatory budget baseline consistently over several fiscal years so the practical effect would be agencies eliminating existing regulations if they wanted to promulgate new ones. Nevertheless, this concern highlights the need to carefully consider how to measure the baseline. A regulatory baseline level set too high could have the unintended consequence of increasing regulatory burdens as agencies use all their regulatory budget cap space.

A Presidential Regulatory Budget. Under this proposal, the President would be required to submit an annual regulatory budget to Congress at the same time as the current fiscal budget submission. While most presidential budgets include some detail of large, usually controversial regulations an administration will pursue in the forthcoming year, such summaries are usually political in nature and not designed to provide analysis or thorough regulatory cost estimates. A presidential regulatory budget would have to

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[31] McLaughlin, op. cit.
[32] Clyde Wayne Crews, *Mapping Washington's Lawlessness 2016: A Preliminary Inventory of "Regulatory Dark Matter*," Competitive Enterprise Institute, December 2015: https://cei.org/sites/default/files/Wayne%20Crews%20-%20Mapping%20Washington%27s%20Lawlessness.pdf.
[33] As a recent example, the U.S. Department of Education asserted its authority in proposing a rule that would expand the terms and conditions under which student loan borrowers could have their loans discharged. The proposed defense to repayment regulation could cost taxpayers anywhere from $646 million to $41.3 billion over 10 years. See the House and Senate Budget Committee chairmen letter to Secretary John B. King, Jr., 14 July 2016: http://www.budget.senate.gov/imo/media/doc/EnziPriceLetter.pdf.

outline all rulemaking and guidance for the fiscal year and project possible rulemakings and guidance for several future fiscal years. Additionally, the President would have to provide an estimate for projected regulatory costs for all regulations and guidance proposed in the budget submission.

CBO Regulatory Cost Estimate. This idea would add to the current CBO fiscal cost estimates and include a CBO score of "regulatory costs."

Enforceable Points of Order. Several proposals, including that of Representative Walker and Senator Lee, would include enforceable points of order in both the House and Senate. Again, this is similar to current budget points of order for spending and revenue, but it would apply to a regulatory budget cost estimate. Any additional regulatory requirements increasing the regulatory score relative to the baseline would need to be offset.

Retrospective Reviews. The entity tasked with establishing the regulatory baseline and executing regulatory cost estimates would also be required to conduct retrospective analysis of legislation that has been implemented by agencies. As regulatory costs can change dramatically and can also potentially increase spending and revenue cost estimates, robust retrospective reviews are a cornerstone of regulatory budgeting.

REGULATORY PAY-AS-YOU-GO

Under regulatory pay-as-you-go – also known as "One In, One Out" or "One In, Two Out" – regulations are counted, and for any new regulation issued, an agency is required to eliminate an equal or greater number of existing regulations. In the U.S., this idea has been discussed at length by Senator Mark R. Warner (D-VA).[34] While Senator Warner has not introduced legislation, hearings on the topic have been held by the Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on the Budget.[35]

In addition to Senator Warner's work on regulatory pay-as-you-go, during the 114th Congress, Senator Daniel S. Sullivan (R-AK) introduced S. 1944, the Regulations Endanger Democracy Act, or RED Tape Act. This legislation would implement a regulatory pay-as-you-go system at all agencies. Under S. 1944, an agency is prohibited from issuing new rules or regulations or modifying existing regulations until the agency has repealed one or more existing rules of equivalent magnitude.

PROS AND CONS OF REGULATORY BUDGETING

Not surprisingly, regulatory budgeting introduces its own combination of potential benefits and hazards, and policymakers would need to weigh them against one another in judging whether and how to apply the practice.

One of its principal advantages is simply that a budget of regulations would shed light on the proliferation of rules and mandates, a considerable extension of government's reach. Regulation is a tempting proxy for spending as fiscal budgets tighten – and is a less transparent one as well. "Spending is an observable outlay, capable of being summed

[34] Senator Mark R. Warner (D-VA), Regulatory PAYGO: http://www.warner.senate.gov/public/index.cfm/regulatory-paygo.
[35] Rosen and Callanan, op. cit., p. 855.

across the economy, but regulatory costs are not easy to track, and usually are not tracked. As fiscal budget deficits mount and as pressure on the federal budget increases, the choice between spending and regulation to achieve governmental ends can tilt toward regulation."[36]

A regulatory budget also would allow better ranking of risks and opportunity costs in regulation. At present, agencies do not, and cannot, compare the effects of their regulations with those of other agencies. There is no consideration of inter-agency tradeoffs or overall limitations. "The Food and Drug Administration, for example, could analyze the relative merits of regulations under its jurisdiction under a budget, but it could not evaluate its own rules in relation to, say, EPA's. This tunnel vision is one of the primary pitfalls of cost-benefit analysis and risk assessment as regulatory control tools, despite their reputation among reformers. Under a net benefit standard propelled by agencies, *government must grow without end*."[37]

A third advantage is the potential for gaining more objective assessments of regulatory costs. Agencies would still have an incentive to understate those costs, and the businesses and individuals subject to regulation would remain inclined to overstate them. Nevertheless, third-party assessments, along with comment from the public and the academic community, would likely bring more reasonable estimates to the surface.[38] As a result, ultimate accountability would fall, as it should, to elected policymakers.

Notwithstanding these potential benefits, however, regulatory budgeting has potential disadvantages, some more subtle than others. As noted previously, the difficulty of measuring economic effects, if that is the aim, is a major problem. Few can agree on the appropriate range of economic effects to be considered. Another challenge is choosing who should do the measuring.

Beyond those is the possibility that the very act of creating a regulatory budget might confer tacit approval on this extension of government's reach. It might implicitly concede the legitimacy of government's imposition on broad sectors of the economy, even as it seeks limits. Then when a party or sector is exempt from some regulatory regime, that relief can come to be seen as an actual government favor. "Taxation offers a direct analogy. The federal government implicitly regards all income as belonging to it. Amounts that individuals and businesses are allowed to deduct from taxable income are referred to officially as 'tax expenditures.' Tax breaks in effect get classified as losses to the federal Treasury. Therefore, the risk that exemption from regulation could come to be perceived in future policy debates as a government favor is not remote. A regulatory budget must expose and control government's intervention in the economy, not perversely aggravate over-delegation to unelected regulatory agency personnel, the very circumstance it is intended to remedy."[39]

The temptation to include potential benefits in the analysis of regulation – however reasonable it sounds – may actually defeat the purpose of a regulatory budget. "Pretending to 'balance' societal costs with societal benefits can descend into a utilitarian

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[36] Clyde Wayne Crews Jr., statement to the Committee on the Budget, U.S. House of Representatives, 7 July 2016.
[37] Ibid, italics in original.
[38] Ibid.
[39] Ibid.

'greatest good for the greatest number' formulation that dispenses with protection of individual rights and property rights, particularly in the absence of compensation for those expected to bear the costs. Costs consist of more than dollars. They involve time lost and roads not taken, loss of liberties, and lost opportunities discernible only to the individual experiencing them. These are not quantifiable. A regulatory budget that incorporates net benefits could potentially green-light unbounded government growth, since every agency argues nearly every rule they produce confers net benefits. There are real, societal costs to overregulation, not just the lack of it."[40]

Moreover, the parties enjoying those benefits may not be the same people paying for them. For example, presumably all society benefits from regulations governing wetlands and endangered species, but the costs fall almost entirely on the owners of property where the wetlands or protected species appear. "When the costs of a rule that purportedly benefits society in general are imposed on a few political losers, biases toward excessive regulation emerge. From the standpoint of lawmakers, regulation is cheap relative to policies that require on-budget spending. That, in turn, induces them to 'buy' too much."[41]

WHAT OTHER COUNTRIES ARE DOING

British Columbia, Canada

British Columbia is the western-most province in Canada, with a population of 4.7 million, equivalent to that of Louisiana. Its largest city is Vancouver. In 2001, the provincial government announced it would cut regulations by one-third over three years. To reduce regulations, the British Columbia Government ultimately chose a policy of "One In, Two Out," meaning that for every one new regulation, two had to be removed.[42] To reach this goal, the provincial government first had to choose a way of measuring progress and success against the stated goal. The Minister of Deregulation decided to use "regulatory requirements" as the unit of measure. A regulatory requirement was defined as "an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges."

Over several months, the Minister of Deregulation and his staff began to manually count the "regulatory baseline." This evaluation revealed 382,139 regulatory requirements across the government. Significantly, the British Columbia model counted regulatory requirements without regard to their size. This meant the Minister of Deregulation and his staff did not have to calculate the economic impact for each requirement or offset new regulations with regulations of equivalent size. After the count, government agencies were assigned a baseline and required to track progress against it. Progress was published quarterly so it would be transparent to the public.

The 2001 baseline and regulatory budget were not codified in law. Nevertheless, subsequent elected officials have extended the program, which remains in effect through

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[40] Ibid.
[41] Ibid.
[42] Laura Jones, *Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?* Mercatus Research, the Mercatus Center at George Mason University, November 2015: http://mercatus.org/sites/default/files/Jones-Reg-Reform-British-Columbia.pdf.

2019 as a "One In, One Out" system for no net increase in regulations. To date, the British Columbia Government has achieved a 41-percent reduction in regulations relative to the 2001 baseline.

The Dutch Standard Cost Model

In the 1980s, the Netherlands was suffering through stagnant economic growth and high unemployment. To reverse this trend, the government pursued economic liberalization policies, deregulation, and tax reform.[43] Eventually, the Dutch attempted to quantify administrative burdens in a form that has become known as the Standard Cost Model. Specifically, the model measures costs of compliance associated with regulations, including permitting requirements, the number of forms to complete, nutrition labeling requirements, complying with requests for information, and so on.[44]

The Dutch Standard Cost Model has been applied in several countries, including France, Italy, the United Kingdom, Norway, and Denmark.

United Kingdom

In the mid-2000s, under Prime Ministers Tony Blair and Gordon Brown, the United Kingdom established a Better Regulation Task Force. Using the Dutch Standard Cost Model as a framework, the task force eventually determined the government had 20,000 regulations at a cost of £13.6 billion annually.[45] Some 70 percent of England's regulatory requirements and administrative burdens were imposed by the European Union (and remain in effect until Great Britain formally leaves the Union). Because these were binding on all E.U. members, the U.K. excluded them from the administrative burden calculation, counting only its own self-imposed rules.

The government then required each department to reduce its cost of administrative burdens by 25 percent. The agencies met the 25-percent reduction target. In 2011 Prime Minister David Cameron instituted a "One In, One Out" policy. This program was later increased to "One In, Two Out." In this U.K. model, no agency can issue new regulations that would impose a direct net cost on the private sector without reducing existing regulatory burdens by twice the cost.[46] Direct net cost is defined as the cost the regulation will impose on the private sector minus the direct benefits the regulation will confer on the private sector. According to a 2013 report, the U.K. "One In, One Out" policy has saved businesses an estimated £1.19 billion.[47]

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[43] Edward Donelan, "Presentation on Dutch Standard Cost Model," funded by the European Union: http://www.ebesm.eu/template/default/files/Jordan%20III/6.%20Example%20of%20good%20practice.pdf.
[44] The International working group, on Administrative Burdens, *The Standard Cost Model: A framework for defining and quantifying administrative burdens for businesses*, August 2004: http://ec.europa.eu/eurostat/documents/64157/4374310/11-STANDARD-COST-MODEL-DK-SE-NO-BE-UK-NL-2004-EN-1.pdf/e703a6d8-42b8-48c8-bdd9-572ab4484dd3.
[45] Organisation for Economic Co-operation and Development, *Better Regulation in Europe: United Kingdom*, 2010.
[46] Rosen and Callanan, op. cit., p. 856.
[47] The Department for Business Innovation & Skills, the Ministry of State for Business and Energy, *The Seventh Statement of New Regulation*, December 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271446/bis-13-p96b-seventh-statement-of-new-regulation.pdf.

BEYOND REGULATORY BUDGETING

Often the idea of regulatory budgeting is debated alongside broader regulatory reform efforts. In the U.S. Congress, these debates and discussions most recently culminated with the release of the Speaker's Task Force report on the economy.[48] The task force white paper makes clear that a regulatory budget is a necessary part of reining in the regulatory burden, but it is not a panacea. Regulatory budgets must be combined with other reforms, including the following:

- Adopting the Modernizing the Administrative Procedures Act of 1946;
- Passing H.R. 427, the Regulations from the Executive in Need of Scrutiny [REINS] Act.
- Passing H.R. 1155, the Searching for and Cutting Regulations that are Unnecessarily Burdensome [SCRUB] Act.
- Reforming the Regulatory Flexibility Act.
- Restructuring the Paperwork Reduction Act.
- Improving the Unfunded Mandates Reform Act.

CONCLUSION

In an era of tight fiscal budgets, regulation has increasingly become a principal means of extending government's reach and expanding Executive Branch authority. Although the Federal Government publishes a record of its regulations, Congress does not systematically review and approve them. Nor do lawmakers set limits on the array of regulations the government imposes. The economic effects of regulation are difficult to measure but undoubtedly are significant. So are the potential effects on individual and property rights. Establishing a regulatory budget would not solve every problem of proliferating regulations, but it could be a useful step toward recognizing, and perhaps controlling, the growth of the administrative state.

[48] The Speaker's Task Force report on The Economy, op. cit.

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