

Regulation, Jobs, and America's Global Competitiveness

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

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February 28, 2013

*The views expressed here are my own and not those of the American Action Forum. I thank, without implication, Sam Batkins, Dan Goldbeck, and Cameron Smith for their assistance.

Chairman Goodlatte, Subcommittee Chairman Bachus, Ranking Member Cohen, and Members of the Committee, thank you for the opportunity to appear today. In this testimony, I wish to make three basic points:

- Virtually everyone agrees that we need some type of regulatory reform, but the starting point is to understand the current scale of regulatory costs,
- New regulatory burdens are an important part of the current sluggish performance of the U.S. macroeconomy, and
- New businesses, an important source of job creation, are especially burdened by recent regulatory initiatives.

Let me provide additional detail on each in turn.

The Scale of Regulatory Burdens

Although President Obama has issued four seminal executive orders outlining his vision for the regulatory state, to date there has been relatively modest efforts to “modify, streamline, expand, or repeal” burdensome regulations. Instead, the pace of new regulations has dwarfed notable rescissions.¹

In this regard, here are a few facts on regulations taken directly from the administration’s Office of Information and Regulatory Affairs (OIRA):

- Last fiscal year, the total U.S. paperwork burden grew by more than 355 million hours, or four percent.²
- Currently, the U.S. must manage more than 9,100 government forms, imposing 10.2 billion hours of paperwork.³
- In 2010, the White House reviewed more “economically significant” regulations than at any time in the past fifteen years (see Chart 1).
- The current “Unified Agenda” of federal rulemakings contains 128 “economically significant” regulations (impact of \$100 million or more).

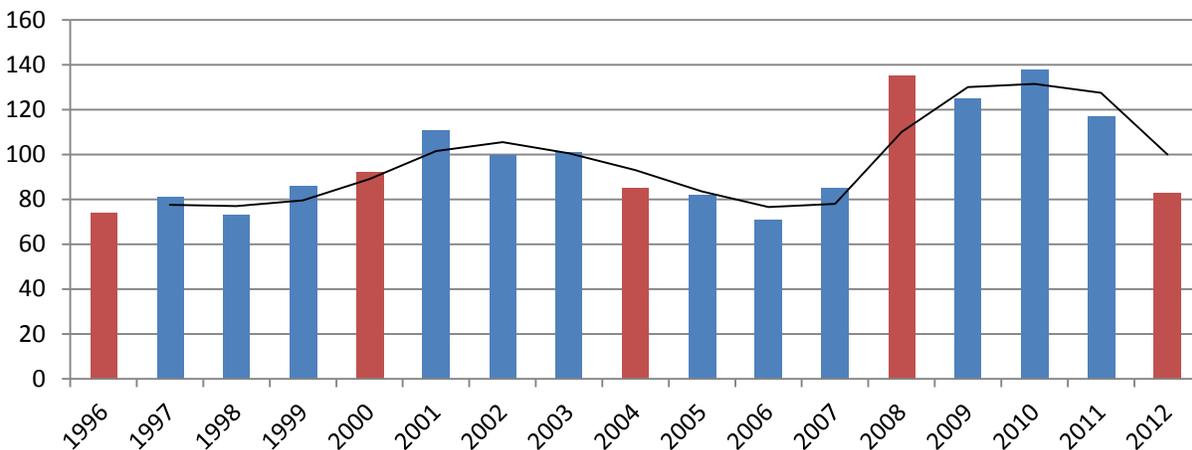
¹ “Improving Regulation and Regulatory Review,” Executive Order 13563 of January 18, 2011.

² Office of Management and Budget, Information Collection Budget of the United States Government 2012.

³ Office of Information and Regulatory Affairs (OIRA), Inventory of Currently Approved Information Collections.

Chart 1

Economically Significant Regulations Reviewed (moving average)



The American Action Forum (AAF), in an effort to track 100 percent of federal rulemakings, has tallied the cumulative burden of regulations since 2011. Looking to document the impact beyond “economically significant” rules, AAF has tracked thousands of regulations in the past three years. All of the figures listed below are merely data recorded directly from the Federal Register, the “Daily Journal of the United States Government.” AAF does not re-estimate or modify agency estimates. If an agency says a rule will impose \$3 billion in costs, or save \$3 billion, we record the data as listed each day.

From an economic perspective, the totals are sobering: \$294 billion in regulatory activity since 2011, including \$43 billion in final rules that year, and \$215.9 billion in 2012, the highest AAF has recorded. During the past four years, the cumulative regulatory cost burden has increased by more than \$520 billion, taking into account proposed rules yet to be finalized. These figures place significant obstacles to growth in a time of persistently high unemployment.

To put the \$520 billion figure in perspective, it is more than the combined gross domestic product of Portugal and Norway, and there is little evidence 2013 will slow this pace. Based on a review of the 2012 Unified Agenda, AAF identified \$123 billion in possible regulations this year, based on only 40 regulations (out of 2,387 active actions).⁴

To date, the federal government has published more than \$12.2 billion in new costs (\$5.5 billion in final rules and \$6.7 billion in proposed rules). These figures include the three significant cost-cutting measures from the administration:

- A \$3.2 billion proposed rule from Health and Human Services to enhance “Efficiency, Transparency, and Burden Reduction” in Medicare and Medicaid;

⁴ American Action Forum, Regulatory Calendar: Administration Releases 2013 Regulatory Plan, available at <http://americanactionforum.org/topic/regulatory-calendar-administration-releases-2013-regulatory-plan>.

- A final EPA rule reducing burdens on engine manufacturers by \$520 million; and
- A \$52 million amendment from EPA rescinding burdens for the Portland Cement industry.

Without these efforts to rescind or streamline existing regulations, there would be more than \$16.1 billion in cumulative regulatory burdens for 2013, putting the U.S. on track for another year of \$100 billion in regulatory costs.

However, the pace and implementation of the President's two lodestar executive orders, 13,563 and 13,579, simply cannot offset the new burdens. For example, according to White House data, few independent agencies have submitted a final plan to rescind outdated regulations.⁵ With the implementation of Dodd-Frank generating approximately 400 new regulations, examining the role of independent agencies is even more vital to achieving substantive regulatory reform.

Dodd-Frank and Affordable Care Act Contribution to Burdens

As noted above, the federal government added more than 355 million paperwork burden hours in the last fiscal year. To put that in perspective, it would take more than 177,000 employees working 2,000 hours annually to complete the new red tape, and these are the workers required to serve only the regulatory additions in FY 2011.

The main drivers of this paperwork are Dodd-Frank and the Affordable Care Act (ACA). According to OIRA, "new statutory requirements" have produced 711 million new hours in the last two fiscal years alone. The President's new paperwork burdens comprise 42 percent of all statutory requirements since 2001, and there are still hundreds of Dodd-Frank and ACA rules to implement in 2013.

Based on AAF's tabulation, the ACA has produced \$33.8 billion in costs on private entities, and state and local governments. These costs have translated into significant paperwork requirements as well, 80.9 million hours. Based on OIRA records, there are eight ACA rules at the White House currently, 17 expected by the third quarter of 2013, and four more scheduled for December 2013. Few dispute that these 29 rulemakings will add billions of dollars in costs and several million more paperwork hours.

Dodd-Frank has produced similar regulatory burdens, but because independent agencies are not required to provide quantitative cost-benefit analysis, the listed costs are far lower. Since 2010, Dodd-Frank has generated \$15.1 billion in direct compliance costs and 59.7 million paperwork burden hours.

At first glance, it is easy to discern that Dodd-Frank's cost profile is woefully under-reported. For example, of Dodd-Frank's 115 regulations that have imposed reporting requirements, only

⁵ Regulatory review plans under Executive Order 13563, available at <http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>.

67 listed costs, or 58 percent. When agencies did list cost data, the average rulemaking imposed \$217 million in burdens.

The lack of data translates into 19 million paperwork hours without listed compliance costs. The cost of red tape under Dodd-Frank varies tremendously, up to \$400 an hour, but agencies have used \$100 an hour as a central estimate for many rulemakings. If we assigned these 19 million paperwork hours a cost, Dodd-Frank's burden would jump to \$17 billion. Again, with 103 "active" Dodd-Frank rulemakings scheduled in 2013, these costs will only grow. Sadly, from a policy and transparency perspective, many agencies will never conduct a full analysis, and the public will never know the full impact of implementation.

Economic Implications of the Additional Regulatory Costs

As noted above, during the past four years the cumulative regulatory cost burden has increased by more than \$520 billion. Put differently, the regulatory initiatives of the past several years have imposed a nearly half-trillion dollar tax on the economic expansion. This has an unambiguously negative impact on economic growth. There are several perspectives from which to view this.

The first is to acknowledge that regulatory initiatives are not born in a vacuum; they instead stem from a desire to seek environmental, financial stability, social welfare, or other policy objectives. From this perspective, the regulatory costs reflect a decision to put these objectives above the goal of more rapid economic growth – a decision that is part of a fair debate over policy priorities.

Second, these regulatory initiatives can have a profound impact on U.S. competitiveness, namely for our manufacturing sector. In a report issued earlier this month, AAF identified at least \$359 billion in regulatory burdens imposed on manufacturers during the last ten years.⁶ In addition, there were nearly 100 economically significant regulations issued during that time from EPA, and the Departments of Energy and Labor alone, chief regulators of the manufacturing sector. The recent Unified Agenda offers little hope for relief, as regulators have outlined an additional \$9.2 billion in costs for manufacturers.

From another perspective, the regulatory initiative is of a scale comparable to the tax increases in the recently enacted "fiscal cliff". There has been deserved concern over the wisdom of a sharp tax increase in the midst of a recovery that has failed to attain even near-trend economic growth, but advocates have argued that the progressive nature of the tax increases provides income distributional gains that outweigh the negative growth consequences. It is harder to advocate for the regulatory burden that both harms growth and imposes the greatest economic burden on workers.

⁶ American Action Forum, The Intersection of Regulation and Manufacturing, available at <http://americanactionforum.org/sites/default/files/AAF%20Regulation%20and%20Manufacturing.pdf>.

Impact on Global Competitiveness

Curbing regulatory growth is not only a bipartisan issue, but also an international concern, as nations around the globe craft pro-growth reform efforts. From the United Kingdom, to South Korea, to Portugal, sensible regulatory policy is hardly a U.S. concern alone.

The United Kingdom has already adopted an aggressive regulatory reform system that contains the following elements: “1) operating a ‘one in, two out’ rule for business regulation, 2) assessing the impact of each regulation, 3) reviewing the effectiveness of government regulations, 4) reducing regulation for small businesses, 5) improving enforcement of government regulations, and 6) using alternatives to regulation.” Although there are legal hurdles in the U.S. to adopting a “one in, two out,” framework, the other items above are already practiced with some regularity on the federal and state level; however, few are codified, and even fewer apply to independent agencies.

If a “one in, two out,” regulatory budget is adopted in the U.S., it could save billions of dollars. The UK reports that their budgeting system for new rules has saved £919 million, or approximately \$1.3 billion, since the Cameron government instituted the program.⁷

According to a report from the Organisation for Economic Co-operation and Development (OECD), South Korea “has made impressive progress in a very short time period implementing regulatory reform to streamline regulations.”⁸ Korea has already reviewed more than 11,000 regulations, halving their number, and reforming another 2,400 rules. Needless to say, OECD has issued no such report highlighting U.S. efforts to halve the number of burdensome regulations.

Finally, Portugal, a country struggling to motivate growth, has implemented a number of successful reforms. According to OECD, Portugal has introduced “Simplex Test, mainly to assess the administrative burdens which new regulation could impose on citizens and businesses.” This Simplex Program “catalogues specific and cross-cutting initiatives to reduce or eliminate the costs which administrative procedures impose on citizens and firms.” The ultimate goal of these efforts is to improve the business environment and to attract foreign investment.

The U.S. regulatory system should also be an international model, as opposed to an aberration. Emulating just a handful of the reforms above would lead to a more rational and more effective regulatory state. OECD has 12 specific recommendations for reform, and as our current economic performance indicates, the U.S. has millions of different reasons for codifying

⁷ Department for Business and Innovation Skills, The Fifth Statement of New Regulation, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/36833/12-p96c-fifth-statement-of-new-regulation.pdf.

⁸ OECD, Korea: Progress in Implementing Regulatory Reform, available at <http://www.oecd.org/regreform/38238965.pdf>.

internationally recognized principles for reform. Our overseas competitors are acting, and so should we.⁹

Small Business Implications of U.S. Regulatory Growth

Small and startup businesses have been a traditional cornerstone of job creation in the United States. Accordingly, it is useful to examine the implications of various regulatory initiatives on the climate for their activities.

Environmental

The EPA is often the center of attention for regulatory critics and progressive environmentalists, and for good reason. OIRA's caseload is routinely filled with major EPA rules, and it concluded review of 93 agency rules in 2010 alone, including 21 economically significant regulations, the highest amount since 1994.

Beyond the topline aggregate burdens of EPA's rules during the last four years (\$252 billion), there are real local and small business impacts. For example, according to AAF calculations, approximately 100 power plants have announced their retirement, partly because of EPA regulations. No one discounts the impact that low natural gas prices have on our fuel generation mix, but with 42,000 megawatts likely going offline in the next few years, and more than 14,000 employees directly affected, the economic implications of overregulation are profound.

Dodd-Frank Financial Reform

The Dodd-Frank Wall Street Reform and Consumer Protection Act imposes direct compliance costs and its distortions induce economic costs in the form of reduced capital investment, inferior risk sharing, and lost competitiveness. Regulators rarely measure these burdens during implementation of the law.

Despite the intent of the legislation, many small entities are increasingly targeted by regulators. Unlike their larger counterparts, small businesses lack rent-seeking capabilities and a team of regulatory compliance staff.

Using AAF's database of federal regulations, we found 29 Dodd-Frank regulations that even the agencies admit could have a "significant economic impact" on small entities. This term is undefined, but in all 29 instances, regulators conceded that their rules could burden small businesses. Combined, these regulations will impose more than 15.2 million paperwork burden hours and \$6.5 billion in costs.

These regulations affecting small businesses are too numerous to list here, and only ten listed quantified compliance costs, meaning many agencies simply declined to discuss all possible impacts on small entities. When agencies did quantify burdens, the average regulation imposed \$665 million in costs. If agencies displayed greater transparency and conducted an analysis of the possible costs and benefits, the figures above would be far higher.

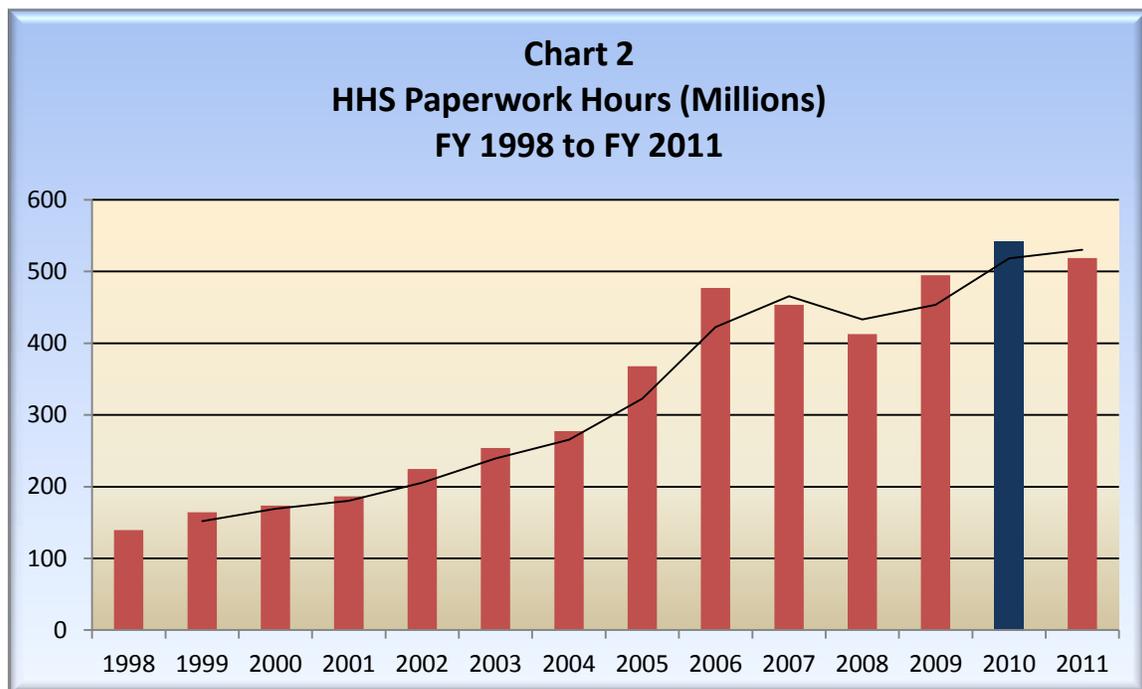
Health

⁹ OECD, Recommendation of the Council on Regulatory Policy and Governance, available at <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>.

When the Congressional Budget Office (CBO) reviewed the ACA under the Unfunded Mandates Reform Act (UMRA), it acknowledged the law “would greatly exceed” statutory cost thresholds (\$70 million for local governments and \$141 for the private sector) “in each of the first five years that the mandates would be in effect.” After approximately three years of implementation, CBO’s estimate was on the mark. The ACA’s regulatory burdens have greatly exceeded UMRA’s thresholds.

The ACA has imposed \$24 billion in costs on private entities and more than 80 million paperwork burden hours, figures that fall disproportionately on small entities.

Even the White House agrees HHS’s paperwork budget has increased. In [FY 2008](#), HHS imposed 412.8 million hours of red tape; in [FY 2011](#), that figure stood at 518.8 million, a jump of 106 million hours, or 25 percent in just three years. The ACA is the direct cause of many of these new requirements. The figure below (see Chart 2) details HHS’s rising regulatory burden, with the pronounced jump in 2010.



AAF did not end its analysis of the law’s costs alone. We also searched the relevant Regulatory Impact Analyses (RIA’s) to determine aggregate benefits. Sadly, costs outweigh benefits by a ratio of at least 3 to 1 – \$33.8 billion in costs to \$9 billion in quantified benefits. The ACA not only fails the regulatory cost-benefit test, but the budgetary and policy tests as well.

As noted, under the RFA, all federal agencies must consider the impact of their proposal on small entities, seek appropriate input, and develop regulatory alternatives for small businesses. Frequently, agencies ignore the RFA, but acknowledging that a regulation imposes a “significant economic impact on a substantial number of small entities” is rare, mostly because the term is undefined.

However, the ACA has met this threshold on almost a dozen occasions. Below are eleven regulations that HHS conceded would place significant burdens on small businesses. Combined, rural hospitals and doctors would incur more than \$1.9 billion in burdens and 11.3 million paperwork hours.

ACA Rules Burdening Small Businesses According to HHS

| <u>Regulation</u> | <u>Cost</u> | <u>Paperwork Burden</u> |
|---|--------------------|--------------------------------|
| Proposed Menu Labeling | \$757.1 Million | 622,000 Hours |
| Final Shared Savings Program | \$451 Million | N/A |
| Proposed Vending Machine Labeling | \$423.1 Million | 842,000 Hours |
| Final Physician Fee Schedule | \$172.9 Million | 365,197 Hours |
| Proposed Covered Outpatient Drugs | \$81.4 Million | 391,212 Hours |
| Final Billing for Skilled Nursing Facilities | \$29.93 Million | 913,884 Hours |
| Final Payment Policies | \$11.58 Million | 196,509 Hours |
| Final Patient Notification Requirements | \$2.55 Million | 138,032 Hours |
| Final Outpatient Prospective Payment | N/A | 1,010,876 Hours |
| Final Inpatient Prospective Payment | N/A | 6,838,293 Hours |
| Final Hospital Payment System | N/A | N/A ¹⁰ |
| <u>Aggregate Small Business Impact:</u> \$1.9 Billion and 11.3 Million Hours | | |

These regulations are only part of the law’s overall burden. Several of the administration’s regulations admit they will adversely affect small rural hospitals. One proposal covering Skilled Nursing Facilities [SNF] concluded, “We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Therefore, the Secretary has determined that this final rule may have a significant impact on the operations of a substantial number of small rural hospitals.”

Although \$1.9 billion in costs, and adverse impacts on doctors and rural hospitals might appear significant, the actual burden is much higher, as many of the administration’s formal regulatory publications never capture the macroeconomic impact.

Examining Cumulative Regulatory Burdens

It is clear the U.S. cannot continue to add significant regulation after significant regulation without any regard to cumulative regulatory burdens. On that point, President Obama agrees. In Executive Order 13,610, the President established four key principles for identifying and reducing regulatory burdens. The Order read: “[A]gencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.”

¹⁰ According to the rule, “These requirements are exempt from the PRA [Paperwork Reduction Act] in accordance with the provisions of the Affordable Care Act.” 75 *Fed. Reg.* 72238.

Few would disagree with that statement, but after numerous executive orders and OIRA memos, the pace of burden reduction is hardly commensurate with the burdens of new rules. To date, we still do not have a comprehensive database outlining all agency rules, and their cumulative impact. It is virtually impossible to reform our regulatory system without an idea of the costs and benefits of the rules in place.

Although I do not believe agencies are likely to publish their regulatory “budget” anytime soon, there are perhaps easier options for Congress and agencies to evaluate cumulative regulatory burdens. The Paperwork Reduction Act (PRA) has forced agencies to catalogue red tape requirements since 1980. As mentioned, the current government-wide total is 10.2 billion hours.¹¹ If agencies view a comprehensive retrospective review of their regulatory agenda as impractical, the PRA may allow agencies to balance their “paperwork budget” without threatening “public health, welfare, safety, and our environment.”

For example, HHS currently collects 1,147 forms, with more than 3.2 billion annual responses; this translates into more than 521 million paperwork burden hours, and a reported cost of \$412 million, from just one government agency. One idea AAF has put forth in the past would establish regulatory neutrality for paperwork collections. Thus, if an agency sought to add to an existing collection or propose a new paperwork form, it would have to rescind outdated collections or merge existing requirements with new burdens.

This is hardly an impossible task. The Consumer Financial Protection Bureau recently amended its collections for Regulations X and Z, saving more than 8.4 million hours. Other agencies could emulate this approach to ensure the cumulative burden of paperwork does not impose too high of a burden for businesses and individuals.

According to the National Federation of Independent Businesses (NFIB), paperwork is one of the biggest concerns for small businesses. By forcing agencies to live within a paperwork budget, businesses and individuals would gain needed certainty, and public health and safety protections would not be undermined. This is a modest policy proposal, but one that achieves the goals of regulatory transparency and burden reduction.

Conclusion

All Members of this Committee would agree that we need a regulatory system that encourages entrepreneurship, promotes economic growth, and protects the health and safety of Americans. There are doubtless benefits associated with the regulatory costs outlined, but we cannot ignore the cumulative impact of regulations, or the burden on small businesses that are ill equipped to handle thousands of hours of paperwork.

By introducing much-needed transparency across all federal agencies, measuring costs and benefits of new rules, and attempting to keep our “regulatory budget” neutral, we can achieve the dual goals of promoting economic growth and protecting public health.

Thank you. I look forward to answering your questions.

¹¹ Office of Information and Regulatory Affairs (OIRA), Inventory of Currently Approved Information Collections.

