TRIPLE THREAT TO WORKERS AND HOUSEHOLDS: IMPACTS OF FEDERAL REGULATIONS ON JOBS, WAGES AND STARTUPS

HEARING

BEFORE THE

SUBCOMMITTEE ON
REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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TRIPLE THREAT TO WORKERS AND HOUSEHOLDS: IMPACTS OF FEDERAL REGULATIONS ON JOBS, WAGES AND STARTUPS

WEDNESDAY, FEBRUARY 24, 2016

HOUSE OF REPRESENTATIVES,

SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

COMMITTEE ON THE JUDICIARY,

Washington, DC.

The Subcommittee met, pursuant to call, at 3 p.m., in room 2141, Rayburn House Office Building, the Honorable Darrell Issa, (acting Chairman of the Subcommittee) presiding.

Present: Representatives Marino, Issa, Collins, Ratcliffe, Johnson, Conyers, Jeffries, and Peters.

Staff Present: (Majority) Daniel Huff, Counsel; Andrea Lindsey, Clerk; (Minority) Slade Bond, Minority Counsel; Susan Jensen, Counsel; and Rosalind Jackson, Professional Staff Member.

Mr. ISSA. Good afternoon. The Subcommittee on Regulatory Reform, Commercial and Antitrust Law will come to order. Without objection, the Chair will be authorized to declare recesses of the Committee at any time. We welcome everybody to the hearing today on "Triple Threat to Workers and Households; Impacts of Federal Regulations on Jobs, Wages, and Startups." And I will now recognize myself for an opening statement, having made an opening statement simply by reading the title.

To some people in Washington, it seems naturally, or even desirable, for the world to be governed by an endless, expanding web of integrate rules. Perhaps that is because Washington is a city of zealous policy advocates and lawyers, of which I am not one. A 2012 *Washington Post* article noted that law firms are flocking to Washington, D.C., for "work centered around the capital's regulatory regime." There is no question that is true.

I am sure, when I ask each of you your professions, I will get two out of four as lawyers as a start. But I think, more obviously, this is a city of lawyers. This is a city and a region in which you cannot even get off jury duty by being a lawyer because they could not get a jury impaneled if they let lawyers off the hook.

There is a great distance, both physically and socially, between the regulators and the regulated. Regulators understand job impacts intellectually. They understand what they hope to achieve in the way of protection, but they often do not meet with industry rep-

resentatives, but they are within the D.C. bubble. No one they know is going to lose a job because of overregulation.

Increasingly, there are two different worlds. Perhaps the insensitivity explains the current Administration's fanatic commitment to increased regulations, even as a recovery remains shaky. Each year since 2008, regulators have added more than $100 billion; that is a billion with a "B," in new regulatory cost.

For 2016, the Administration plans 22 "economically significant" regulations, up 20 percent from 2015. Outside the Beltway, we feel the impact. A National Black Chamber of Commerce study found that EPA's "proposed Clean Power Plan would impose severe and disproportionate economic burdens on poor families, especially minorities." No wonder Gallup recently found a near-record 69 percent of Americans named big government as the biggest threat to our country's future.

Regulatory advocates, of course, dismiss this. Instead, they focus on the aggregate employment. Factory workers may lose their jobs, but people in Washington assume they can find other ways to make a living: perhaps, go back to law school. And that just shows how much out of touch regulatory advocates often are, working here in the public world of Washington, D.C. Any count of the "aggregate number" of jobs also ignores the quality of those jobs.

Data shows that job displacement causes significant and lingering economic and physical hardship. Regulatory compliance jobs do not boost productivity; or another way of putting it is you never got a faster horse by putting more people on its back.

Moreover, as formal OIRA Administrator Cass Sunstein has argued, even if you are not convinced that regulations kill jobs, regulators need to be "giving a lot more attention to that risk." Unfortunately, only 20 percent of agencies qualify employment effects.

Meanwhile, unemployment and underemployment are far higher than they are reported at any time, and particularly in January. We certainly see the U6 unemployment rate, which includes those workers who cannot find full-time work, stands at 9.9 percent.

Similarly, the labor force participation rate remains at near all-time lows. Many displaced workers have simply given up looking. Job creation depends on startups and new businesses. New businesses account for nearly all net new job creation, and almost 20 percent of gross job creation. Yet the U.S. has dropped from 12th among developed economies in terms of business startup activity.

Economists identify regulatory hurdles as one of the most significant influences on business dynamics. Today, "almost 40 percent of U.S. jobs require a government license, as compared with 5 percent just one generation ago." It is worth examining root causes of this trend, and when Federal and State regulatory requirements serve as barriers to market entry.

In 2008, business deaths outnumbered business births for the first time in 35 years. Overregulation has wrecked the old economy. Now, it is suffocating startups. We have a unique panel of witnesses from old-line business, as well as the startup community, who can help us understand how deeply this problem is affecting our constituents. And I truly look forward to their testimony. And with that, I recognize the Ranking Member, Mr. Johnson of Georgia, for his opening statement.

Mr. JOHNSON. Thank you so much, Mr. Chairman. Today's hearing, the so-called triple threat of Federal regulation on jobs, wages, and innovation, is yet another attempt to justify the crony capitalist mission of regulatory reform. To suggest that we do not need any regulations and that regulations are terrible and a threat to jobs, wages, and innovation is just ridiculous.

While my Republican colleagues have repeatedly asserted that regulations inhibit job growth, all of the available evidence demonstrates that regulations play little role in unemployment. As the unemployment rate shrinks month by month, this argument has now shifted to wages and innovation. Notwithstanding the slippery nature of the regulatory reform debate, the facts remain clear: there is little to no connection between Federal regulation and jobs, wages, or innovation.

Leading experts at the University of Pennsylvania conducted an exhaustive study in 2014 that found that regulation plays a relatively small role in determining the aggregate number of jobs." Earlier studies by a host of experts in economics and administrative law reached similar conclusions. The Economic Policy Institute, San Francisco Federal Reserve, and the National Employment Law Project have also refuted the assertion that regulations undermine wage growth.

And finally, the economics chair at the Mercatus Institute, which is a bastion for conservative, free-market economic theory, has debunked the argument that regulations undermine innovation, finding that the exact opposite is true: "Industries with greater regulatory stringency have higher startup rates," as well as similarly high job creation rates.

Meanwhile, the latest report from the Bureau of Labor Statistics shows that unemployment has fallen to 4.9 percent, the lowest since the George W. Bush recession. That is over 70 straight months of private sector job growth. I think that is about 14 million jobs created over the last 70 months. And that is with the Obama regulatory system, which, by the way, is very pro-worker, pro-environment, pro-public health and safety, and pro-innovation. Even conservative economic theorists have given up insisting that pro-regulatory policies undermine our economic output.

As Douglas Holtz-Eakin, president of the American Action Forum, and with great gnashing of his teeth noted himself, "With low unemployment and rising wages, the Republicans' job gets a lot harder." Noting that a recent jobs report was "promising."

Finally, some will argue today that the sharing economy is proof of the positive effects of deregulation. I strongly oppose that sentiment. The sharing economy involves nuanced questions concerning the interplay between competition, regulation, and consumer protection. It has opened new markets to competition that did not exist just a few years ago, while raising novel and complex regulatory issues.

But let me be clear. The innovation economy has flourished under the Obama administration, just as the Internet blossomed under the Clinton administration. It does not exist in a regulatory or legal vacuum, and there is zero tradeoff between innovation and consumer protection.

In fact, as studies have repeatedly found, consumers only use services where there is a strong foundation of trust. As the Chairman of the Subcommittee knows, I have called for a hearing on this subject, the innovation economy, which this Subcommittee exercises ample jurisdiction over.

Indeed, we could have an entire series on it but, sadly, today's hearing, the 29th anti-regulatory hearing of its kind, will not explore the issues raised by the sharing economy in a thoughtful and evenhanded way. But I look forward to action on this issue, and with that, I will yield back.

Mr. ISSA. Thank you. It is now my privilege to recognize the Ranking Member of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Chairman Issa, we have not conducted a hearing on the devastating impact that overwhelming student loan debt has on families and on our Nation's economy, or how to strengthen protections for employees and retirees of companies and municipalities that seek bankruptcy relief, or the life-threatening public health and safety ramifications of penny-wise but, in my view, dollar-foolish budget cuts made by unelected emergency financial managers, as illustrated by the catastrophic Flint water crisis and the hazardous condition of Detroit public school buildings in Michigan. And these are matters that affect millions of hardworking Americans and that have real consequences, not the illusionary so-called triple threat referred to in the title of today's hearings; and I use the term "illusionary" because there is no empirical evidence that regulations have a deleterious impact on job growth.

In fact, one could argue that a strong regulatory environment actually promotes job growth. For example, my colleagues here, on the other side, assert that the current Administration has issued an unprecedented number of regulations. Assuming that is true for the sake of argument, how can they ignore these facts? Three of them: unemployment has fallen by half since the 2008 Great Recession. The United States is in the midst of one of the longest-running streaks of private sector job creation in history; and three, 14 million new jobs have been created over the past 7 years.

And what about the impact of regulation on wages? The Economic Report of the President, which was just issued earlier this week, reports that wages grew faster last year than at any time since the Great Recession.

Admittedly, wages have not increased as much as they should; they have remained flat, but the cause is not because of overregulation. Rather, wage stagnation is largely a symptom of workplace inequality fostered by declining union membership and the resultant diminished bargaining power of lower- and middle-wage workers.

Sixty years ago, 1 out of every 4 workers belonged to a union. Now, today, less than 10 percent of Americans belong to a union. In fact, union membership in some states is less than 3 percent. Declining unionization, according to one study, accounts for between a fifth and a third of the increase of inequality since the 1970's.

And finally, with regard to the illusionary thought that regulations inhibit the creation of new businesses, this too is inaccurate. Startup companies, by bringing new products and services to the

marketplace, are vital to productivity growth in the United States. And startups create jobs.

In 2013, startups created more than 2 million new jobs, compared with established firms that accounted for over 8 million new jobs. Unfortunately, there are real barriers to entry for new companies. Weak antitrust enforcement over the years has substantially reduced competition, thereby allowing larger firms to squeeze new entrants.

In addition, existing firms often lobby for rules protecting them from new entrants. Eliminating these real barriers to entry should be our Committee's priority, not spending, yet another hearing dealing with illusionary problems. And in closing, I want to thank the witnesses for their presence and participation. I look forward to the hearing of their testimony, and I thank the Chairman for his indulgence.

Mr. ISSA. I want to thank the Ranking Member for his well-thought comments, and would note that at this time, I ask unanimous consent that the Chairman of the full Committee's statement be placed in the record. Without objection, so ordered.

[The prepared statement of Mr. Goodlatte follows:]

Statement of Judiciary Committee Chairman Bob Goodlatte
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
"Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages and Startups"
February 24, 2016, 3:00 p.m., 2141 Rayburn H.O.B.
FINAL

The effects of recession and de-industrialization can be harsh. A scholarly work describes that, after the Carter-induced recession, "stress, mental illness, and marital and drinking problems afflicted laid-off workers in Detroit, Cleveland, Youngstown, Pittsburgh and across the Rust Belt."

It is happening again. A September 2015 study, by a Princeton Nobel Laureate, shows unparalleled, rising mortality in blue collar segments of society.

According to the study's author, "[t]hose are the people who have really been hammered by the long-term economic malaise . . . . Their wages in real terms have been going down. So they get into middle age having their expectations just not met at all." It leads to suicide, drug and alcohol deaths.

But to hear some speak of it, you would think it is all made up. One of the witnesses before us today even mocks what he calls the "regulated industry's chicken little claims about the devastating impact of proposed rules."

Tell that to our nation's coal miners. We will hear testimony that EPA's proposed stream protection rule will destroy the industry, its workers, their families

and communities. This isn't academic speculation. This is the testimony of the head of operations for the nation's largest coal mining company.

Chicken little? Tell that to the residents of Alliance, Ohio. We will hear testimony that the main local employer may have to shut its doors because of an emission regulation that will force it to spend 23% of its net worth on new kiln equipment. This small business is not alone. The entire industry is threatened by an EPA rule said to confer only slight benefits.

President Obama's former OIRA Administrator recommended strongly that regulatory agencies estimate the employment costs of new regulations

before acting. Few quantify employment effects, but the results are still significant.

Between 2012 and 2015, the combined losses from just 22 regulations, according to the agencies' own regulatory impact analyses, totaled 85,981 jobs.

Compliance jobs are unproductive and thus no substitute. A recent Mercatus Center study found that "productivity among the least regulated industries is almost double that of the most regulated industries." Lower productivity raises prices, which has demonstrated regressive effects.

New businesses are deeply affected too. That's a critical concern, because startup businesses are

estimated to be responsible for nearly all net new job creation in our economy.

Antony Davies writes that he wanted to start a pico-brewery with his wife. When "we discovered that complying with regulations would triple our startup costs while providing no significant benefit to anyone other than people paid to serve as government inspectors, we gave up our dream."

So it is time to move beyond the talking points.

Enough of the tired refrain that regulations benefit consumers. We agree. The issue is overregulation and diminishing marginal returns.

With so many regulations already working to protect the public, the low-hanging fruit is gone. Further gains require spending increasingly more to achieve increasingly less. That is precisely why agencies resort to padding their benefit calculations. They use co-benefits, and alter standard metrics, like estimates of the social cost of carbon, in order to make it look like the benefits of their new regulations' outweigh their significant costs.

But all too often, it is not the actual benefits that are high. It is the harmful impacts on workers, low-income households, and entrepreneurs who want to start new businesses and create new jobs.

So I look forward to serious analysis from our witnesses. I will be listening. For the sake of millions of American workers, I hope the Administration listens too.

Mr. ISSA. Additionally, I would ask all Members' opening statements be made a part of the record. Without objection, so ordered.

I would now ask, before we begin, for all the witnesses to please rise and take the oath. Please raise your right hands. Do you solemnly swear or affirm that the testimony you will give here today will be the truth, the whole truth, and nothing but the truth? Please be seated. Let the record indicate that all our many witnesses answered in the affirmative.

Today we are pleased to have a distinguished panel of witnesses. From left to right, we have Mr. Paul Murray. He is vice president of operations at the Murray Energy Corporation. Murray Energy Corporation is the largest independent coal company in America. He has worked at surface and underground coal mines his entire career. His duties have spanned positions from laborer to vice president. Mr. Murray earned his bachelor's degree in mining engineering at West Virginia University and his master's in business administration from the great State of Ohio, Ohio State University. Go Buckeyes.

Ms. Janet Kaboth is president of Whitacre-Greer Company. It is a fourth-generation—congratulations, you beat all the odds—family-run company that has been manufacturing clay products since 1916 in northeastern Ohio. It currently operates a plant in Alliance, Ohio, that employs 80 people. During her over 30 years with the company, Ms. Kaboth has held roles in information systems, marketing, accounting, and strategic planning.

Additionally, Ms. Kaboth serves on various industry and community boards. She earned her degree in education at Miami University in Oxford, Ohio, the alma mater of our speaker, Paul Ryan, and a master's in business administration from Baldwin Wallace College. And I will take just a moment to say, as a native Clevelander, you spent your whole live within a short drive of where I grew up.

Our next witness, Jared Meyer, is a fellow at the Manhattan Institute. His area of expertise includes microeconomic theory and economic effects of government regulations. His work has been featured in various national publication and media outlets. He is also the co-author of a book, "Disinherited: How Washington Is Betraying America's Young."

Mr. Meyer earned his bachelor's degree in finance with a minor in philosophy of law at St. John's University, where he graduated summa cum laude.

Next we have Dr. Patrick McLaughlin, senior research fellow at the Mercatus Center, previously mentioned as apparently not a bastion of liberalism. His research has focused on regulations and the regulatory process. Prior to joining Mercatus, Dr. McLaughlin served as a senior economist at the Federal Railroad Administration. He has published in the fields of law and economics, public choice, environmental economics, and international trade and has testified before both the House of Representatives and the Senate, as well as state legislatures.

Dr. McLaughlin earned his bachelor's degree in language and international trade, as well as his master's and Ph.D. in economics from Clemson University. Dr. Robert Weissman. Is it Weissman or Weissman?

Mr. WEISSMAN. Weissman.

Mr. ISSA. Weissman.—Is the president of Public Citizen. His expertise ranges from corporate accountability and government transparency to trade and globalization to economic and regulatory policy. Prior to joining Public Citizen, Mr. Weissman served as director of the corporate accountability organization at Essential Action and as editor of the Multinational Monitor. He is widely published and has made many media appearances.

Mr. Weissman earned his bachelor's degree in social studies from Harvard University, and his J.D. again from Harvard, where he graduated magna cum laude. No slouch is he.

Dr. Bivens, you are last but not least. You are the research and policy director at the Economic Policy Institute, often called EPI. Your expertise includes microeconomics and monetary policy and economics of globalization, social insurance, and public investment. Additionally, you have provided expert testimony on issues before the U.S. Congress, as well as analyses for the United Nations and the Trade Union Advisory Committee. Dr. Bivens is widely published, including both books and articles, and has made various media appearances. Before joining EPI, Dr. Bivens was assistant professor of economics at Roosevelt University and provided consulting services to Oxfam America.

Dr. Bivens earned his bachelor's degree in economics from the University of Maryland at College Park, and his Ph.D. in economics from the New School of Social Research.

Again, I said it was a distinguished panel; it certainly is, and I thank you. And with that, I would only, as you might imagine, say with this large panel, would you please strictly stay to 5 minutes or less? The counter, little traffic light there, will guide you. Green, of course, means you may continue as quickly as possible. Yellow means you really have to go quick. And of course, red always means stop now. With that, we have our first witness, Mr. Murray.

TESTIMONY OF RYAN MURRAY, VICE PRESIDENT OF OPERATIONS, MURRAY ENERGY CORPORATION

Mr. MURRAY. Mr. Chairman, Members of the Committee, thank you. My name is Ryan Murray. I am vice president of operations at Murray Energy Corporation, our Nation's largest underground coal mining company. I am here today to discuss the devastating impacts from the Stream Protection Rule proposed by the Office of Surface Mining Reclamation and Enforcement: the Nation's mining operations, our proud American coal miners and their families, our numerous suppliers, and our communities.

While I will focus today on the Stream Protection Rule, it is just one of many regulations from this Administration that are destroying our industry's jobs, operations, suppliers, communities, and families.

Murray Energy and subsidiary companies have over 2,000 employees out of work right now from our peak employment of 8,000 employees in May of 2015. Several hundred of these men and women I hired myself. Due to the destructive and illegal actions of the Obama administration, our industry is under attack. Now with the proposed Stream Protection Rule, our industry will be eliminated for no environmental benefit. The SPR was originally con-

ceived to keep surface mining operations from mining through streams.

However, during the 6 years it took OSM to draft the SPR, the rule was manipulated into complete rewrite of the Surface Mining Control and Reclamation Act of 1977. This is most likely due to the fact that OSM drafted the rule largely behind closed doors and without meaningful input from primacy state agencies, nearly all of whom dropped out of the formal consultation process with OSM because they deemed it to be a sham.

Now the SPR will ultimately end all underground longwall mining in the United States. Longwall mining is the safest, most modern, cost-effective, productive, and environmentally friendly method of mining in existence. As the diagrams attached to my testimony show, due to OSM's incredibly broad and unsupported interpretations in the SPR, extremely vast portions of Murray Energy's coal reserves and those of other coal companies will be sterilized if the rule is finalized as proposed. Incredibly, OSM has not even considered the need for a grandfathering provision, which means that primacy states will be required to overturn existing permits for which significant time, planning, and resources have already been expended.

Simply stated, the SPR eliminates the United States coal industry. For underground mining operations, the SPR is expected to strand 289 million tons of coal reserves annually, with a value of at least $18 billion per year. Additional impacts include a decrease in recovery of coal reserves by up to 64 percent, loss of annual contribution to the Nation's GDP of between $26 and $58 billion, and $3 to $6 billion in Federal and state tax revenue reductions. This will be devastating for America.

This is a human issue. Layoffs are expected to be dramatic, with between 40,000 and 77,000 coal miners expected to lose their jobs. These estimates completely undercut OSM's ridiculous suggestion that there will be minimal job impacts from the rule because coal mining jobs will be replaced with compliance and government inspector positions.

The broader effects of these layoffs will be enormous, as suppliers, retailers, and others feel the impact of reduced spending from the mining industry. One outside expert concluded that the SPR would cost between 112,000 to 280,000 jobs throughout the United States. Another analysis indicates an even greater ripple effect, where one lost mining job causes a loss of 11 additional jobs in the community, meaning up to 850,000 lost jobs as a result of the SPR.

For a coal miner, losing a job even temporarily is financially devastating. Most often, their major asset owned by many miners is their home. When they have to relocate just to attempt to find work, to whom are they supposed to sell this home? Their community is devastated. The Administration asserts that these coal miners will simply be retrained for other work within their communities. The reality is, there are virtually no other high-paying jobs in these communities. The average wages of a U.S. coal miner are typically double those of the average in their community.

Additionally, suppliers to the coal industry will be further devastated by the SPR. For example, one major equipment supplier in

the mining industry, who is a world leader in innovation and development, had their first layoff in the company's 80-year history just last month. The SPR will push this innovation and manufacturing to other countries permanently.

Lastly, the impacts on coal mining communities themselves will be significant. Many of these communities rely on coal severance tax revenues to fund critical programs and projects, including school districts. OSM wholly ignored all of these real-world consequences, which disproportionately affect low-income households. The Obama administration's regulatory assault can best be described as a political power grab of America's power grid. It is my sincere hope that Congress will stop the proposed SPR rule.

Thank you for this opportunity to speak on behalf of our Nation's coal miners, and I will be pleased to answer any questions.

[The prepared statement of Mr. Murray follows:]

Mr. Ryan Murray
Vice President – Operations
Murray Energy Corporation
Testimony

House Subcommittee on Regulatory Reform, Commercial & Antitrust Law
House Judiciary Committee
Hearing On: Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages and Startups

Wednesday, February 24
2141 Rayburn House Office Building
3:00 PM, EST

Chairman Marino, Chairman Goodlatte, Ranking Member Johnson and Ranking Member Conyers, my name is Ryan M. Murray. I am Vice President of Operations at Murray Energy Corporation (Murray Energy), our Nation's largest underground coal mining company. I am here today to discuss the devastating impacts from the Stream Protection Rule proposed by the Office of Surface Mining, Reclamation, and Enforcement (OSM) of the Department of Interior, on the Nation's mining operations, our proud American coal miners and their families, our numerous suppliers, and our communities. While I will focus today on the Stream Protection Rule, or SPR, it is just one of many regulations from this Administration that are destroying our industry's jobs, operations, suppliers, communities, and families.

Murray Energy employees about 6,000 Americans in six (6) states, and currently operates seventeen (17) active underground coal mines in Ohio, Illinois, West Virginia, Kentucky, and Utah. The SPR is the single greatest threat to the jobs and family livelihoods of our employees and suppliers that we have ever witnessed.

Murray Energy and subsidiary companies have over 2,000 employees out of work from our peak employment of over 8,000 employees in May, 2015. Several hundred

of these men and women I hired myself. Due to the destructive and illegal actions of the Obama Administration, our industry is under attack. America's coal miners and their families, suppliers, and entire communities are indisputably being destroyed. Now, with the proposed Stream Protection Rule, our industry will be eliminated for no environmental benefit whatsoever.

The SPR was originally conceived to keep surface mining operations from mining through streams. However, during the six years it took OSM to draft the SPR, the rule was manipulated into a complete rewrite of the Surface Mining Control and Reclamation Act of 1977. This is most likely due to the fact that OSM drafted the rule largely behind closed doors and without meaningful input from primacy state agencies, nearly all of whom dropped out of the formal consultation process with OSM because they deemed it to be a sham, and without input from critical coal industry stakeholders, like Murray Energy.

Now, the SPR will ultimately end all longwall mining in the United States. Longwall mining is the safest, most modern, cost effective, productive, and environmentally friendly method of mining in existence. While this rule appears to only apply to surface mining, by design of those orchestrating this rule, it ends the largest underground mines in our Country. As the diagrams attached to my written testimony show, due to OSM's incredibly broad and unsupported interpretations in the SPR, extremely vast portions of Murray Energy's coal reserves, and those of all coal companies using underground mining methods, will be sterilized if the rule is finalized as proposed. Incredibly, OSM has not even considered the need for a grandfathering provision, which means that primacy states will be required to overturn *existing* permits for which significant time, planning, and resources have already been expended. Simply stated, the SPR eliminates the US coal industry.

The SPR will result in severe financial impacts to the mining industry and employees, including underground mining operators like Murray Energy. For underground

mining operations, the SPR is expected to strand 289 million tons of coal reserves *annually* with a value of at least $18.2 billion per year. Additional impacts shown by third party analysis include: a decrease in recovery of coal reserves by up to 64 percent; loss of annual contribution to the Nation's GDP of between $26.7 and $58.7 billion; and $3.1 to $6.4 billion in federal and state tax revenue reductions. This will be devastating for America.

And the financial impacts are by no means limited to these bottom line values.

This is a human issue to me and from a workforce perspective. Layoffs are expected to be dramatic, with between 40,000 and 77,000 coal miners expected to lose their jobs. These estimates completely undercut OSM's ridiculous suggestion that there will be minimal job impacts from the rule because coal mining jobs will be replaced with compliance and government inspector positions. The broader effects of these layoffs will be enormous as suppliers, retailers, and others feel the impact of reduced spending from the mining industry. One outside expert concluded that the SPR could cost 112,757 to 280,809 jobs throughout the United States. Another analysis indicates that there is an even greater ripple effect, where one lost mining job causes a loss of a total of 11 jobs, meaning up to 850,000 lost jobs as a result of the SPR. In Murray Energy, I work with these men and women each day and am very seriously concerned about the livelihoods of their families.

For a coal miner, losing a job, even temporarily, is financially devastating. Most often the major asset owned by many miners is their home. When they lose their job, and have to relocate just to attempt to find work, to whom are they supposed to sell their home? Their community is devastated and there is no one to whom to sell their home. The Administration asserts that these coal miners will simply be retrained for other work within their communities. The reality is that there are virtually no other high paying jobs in these communities. The average wages of a US coal miner are typically double those of the average in their community. Additionally, suppliers to the coal

industry will further be devastated by the SPR. For example, one major equipment supplier to the mining industry who is a world leader in innovation and development of custom designed mining equipment had their first layoff in the company's 80 year history just last month. The SPR will push this innovation and manufacturing to other countries, permanently. Lastly, the impacts on coal mining communities themselves will be significant. Many of these communities rely on coal severance tax revenues to fund critical programs and projects, including local school districts. OSM wholly ignored all of these real world consequences, which disproportionally affect low-income households.

Murray Energy's comments on the SPR include over 14,000 pages of analysis prepared by the Nation's foremost legal and technical experts, which outlines, in great detail, the innumerable flaws and defects in OSMRE's proposal, and provides literature citations that are highly relevant to this rulemaking, which OSMRE either overlooked or intentionally omitted from its supporting record. As Murray Energy's comments demonstrate, the SPR will destroy longwall mining in the United States, cause energy prices to skyrocket, and devastate the jobs and livelihoods of millions of Americans who depend on the economic activity that coal mining generates.

Even after OSMRE released its SPR proposal for a miserly 60-day comment period (subsequently extended only once, for a mere 30 additional days), OSMRE withheld key documents that are essential for the public review and comment process. Indeed, even after Murray Energy submitted a Freedom of Information Act ("FOIA") request for these documents, OSMRE blithely ignored Murray Energy's request. On October 5, 2015, Murray Energy sued OSMRE for its illegal failure to respond. OSMRE cannot possibly hope to win this lawsuit. Instead, OSMRE withheld these documents, and, now that the comment period has ended, the States, industry, and other interested groups will not be able to comment on them. This is the epitome of bad faith, and it is illegal.

Coal miners from Murray Energy attended each and every public hearing convened by OSMRE during the public comment period. Over 1,000 people attended these hearings in opposition to OSMRE's proposal. By sheer numbers, the opposition dwarfed any proponents of this misguided and fatally flawed rulemaking at least ten (10) to one (1), and OSMRE must take note.

The Obama Administration's regulatory assault can best be described as a political power grab for America's power grid. The SPR and the countless other anti-coal regulations such as the Clean Power Plan, Clean Water, Mine Dust, and Ozone Rules are destroying our country's low-cost source of baseload electricity generation. Meanwhile, wind and solar power continue to be propped up by government and tax subsidies. However, for me, this Administration's policies are truly felt at a personal level. I have had the privilege of witnessing many hundreds of our employees improve their standard of living, raise families, send their children to college, and pursue their American dream. It is my sincere hope that Congress will ensure that this American dream stays alive and the devastation wrought by this administration, and particularly the SPR, is stopped.

Thank you for this opportunity to speak on behalf of our coal miners and I will be pleased to answer any questions.

ATTACHMENT

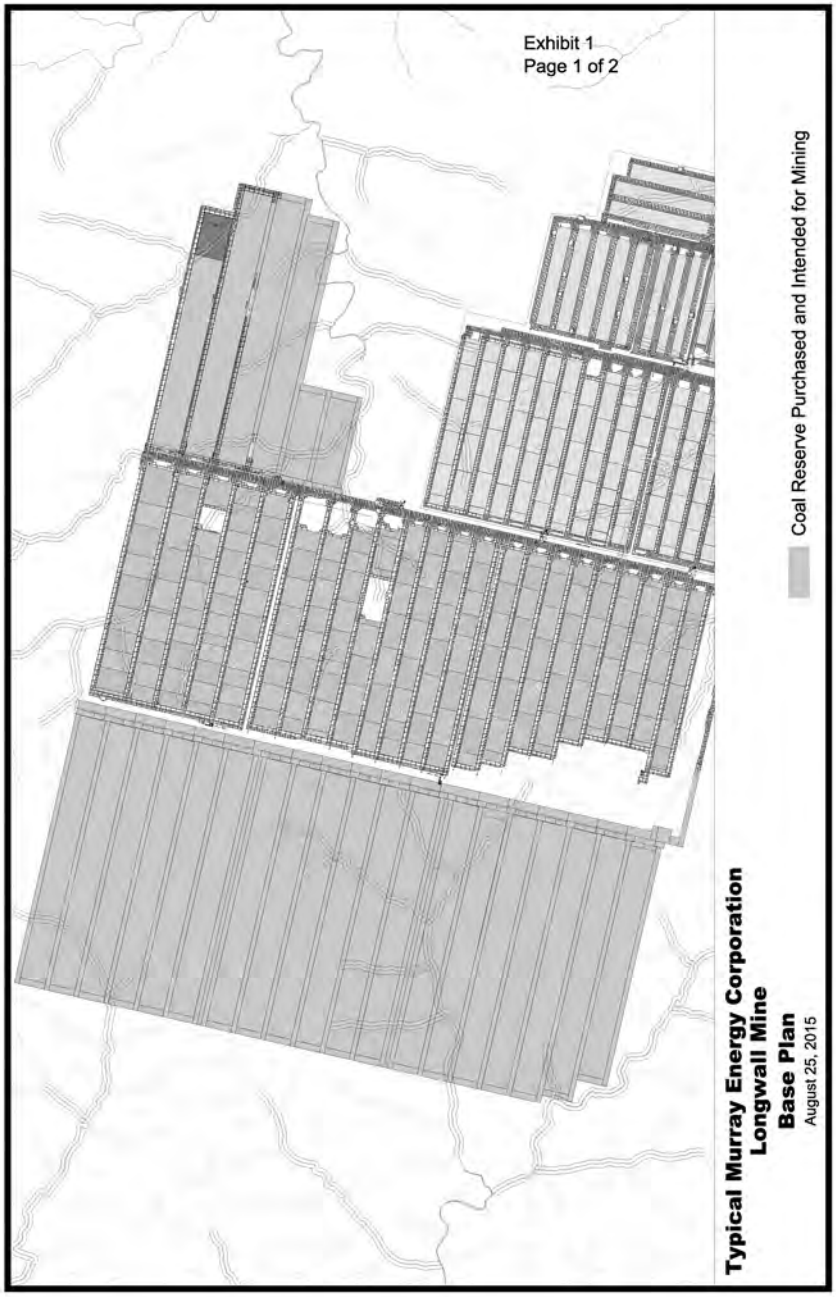
Exhibit 1
Page 1 of 2
Typical Murray Energy Corporation
Longwall Mine
Base Plan
August 25, 2015
Coal Reserve Purchased and Intended for Mining

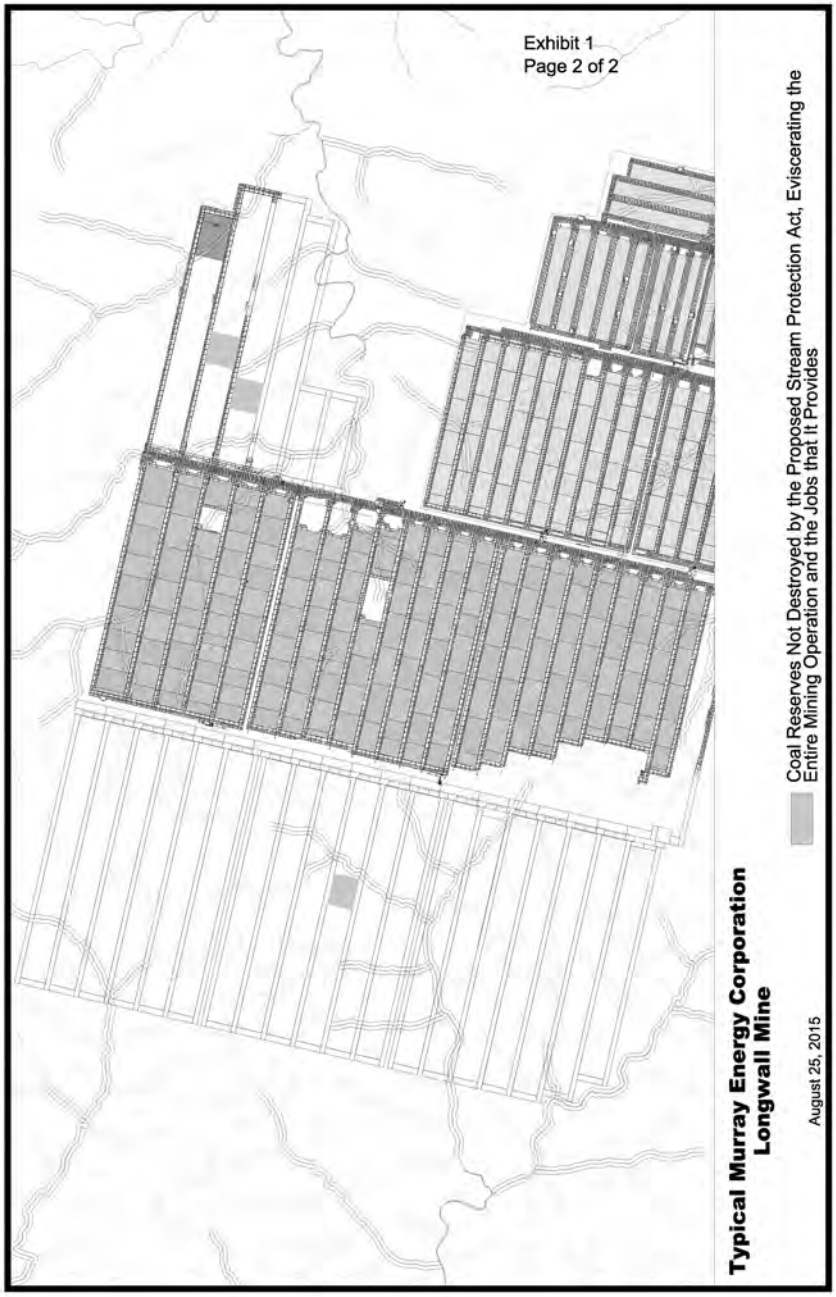
Exhibit 1
Page 2 of 2
Typical Murray Energy Corporation
Longwall Mine
August 25, 2015
Coal Reserves Not Destroyed by the Proposed Stream Protection Act, Eviscerating the
Entire Mining Operation and the Jobs that It Provides

Mr. ISSA. Thank you, Mr. Murray. Ms. Kaboth?

TESTIMONY OF JANET WHITACRE-KABOTH, PRESIDENT, CEO AND CHAIRMAN OF THE BOARD, WHITACRE-GREER COMPANY

Ms. WHITACRE-KABOTH. Good afternoon. Thank you for inviting me to testify. My name is Janet Whitacre-Kaboth. I am the president, CEO, and chairman of the board of Whitacre-Greer Company, which has manufactured clay products in northeastern Ohio since 1916. As we celebrate 100 years in business, we are very proud of our heritage. We operate a manufacturing facility in Alliance, Ohio, that employs approximately 80 people. We manufacture firebrick for the inside of masonry fireplaces and paving brick. In Washington, D.C., paving brick made by Whitacre-Greer form the sidewalks along Pennsylvania Avenue from the Capitol to the White House.

I am here on behalf of my company and the brick industry as a whole, as I serve on the board of the Brick Industry Association. We are a very small company within the brick industry. We only have one plant that has two kilns. Our industry and our company is committed to doing our share and to doing the right thing for our employees, our vendors, customers, and communities.

However, as our industry continues to struggle to come out of the Great Recession, we, like many others, have limited resources. It is extremely important that these limited resources be used judiciously and on the most important issues. It is critical that every dollar we spend gives back some benefit. There are many regulations that affect us, but I am going to talk about two regulations today: the air toxics standard or brick MACT developed by the USEPA; and the proposed revisions to the silica permissible exposure limit, expected to be issued very soon by OSHA. These two rules and their crippling impact on the brick industry illustrate how workers and local communities can be devastated by new regulations.

The current brick MACT is the second time in a decade that the EPA imposed major requirements on our industry. The agency finalized a rule in 2003. Our industry complied with the rule in 2006. But in 2007, the courts vacated the rule. Our industry was in compliance with that rule when it was thrown out, and had spent over $100 million to install 80 of the 100 controls that now exist in our industry. The EPA used the performance of the new controls to establish even lower limits for its current rule, which it finalized in late 2015.

For many brick companies, this will require them to tear out the existing controls that they spent millions on, and purchase more costly new controls in order to produce a slight benefit to the environment. While the brick MACT does allow a health-based standard for some emission types, full compliance will probably require the installation of control devices for particulate matter and mercury for most kilns. For our plant in Alliance, Ohio, the estimated cost is $4 million for control devices and operation. This represents 23 percent of our current net worth, which would eliminate at most 4 pounds of mercury per year.

In September 2014, OSHA proposed revisions to the current PEL for silica. This reduction was proposed as a one-size-fits-all type

regulation that is typical. OSHA estimates costs for this rule to average $38,000 per year annualized over a 10-year period for a brick plant. However, compliance would require an initial capital expenditure of about $906,000.

OSHA has been provided a significant set of studies conducted over the last 75 or more years, demonstrating that the response to the silica used in the brick industry is very different from other industries, and they acknowledge the much lower incidence rate of silicosis from our industry. They also separately acknowledge the high costs of their rule. However, they do not put these two pieces of data together and consider our industry separately when attempting to show that the rule is justified.

In both these cases, the statutes that direct EPA and OSHA to develop these rules have flexibilities contained with them to allow these agencies to meet their obligation without destroying our industry. We just do not know how to make them use these flexibilities and to take the time to do it right, rather than just doing it quickly, and to not take a one-size-fits-all approach that will destroy an industry. Compliance with both of these rules at the same time will devastate our already threatened industry, where 75 percent of the companies are small businesses. This is well documented in a report issued earlier this month by the U.S. Chamber of Commerce entitled "Regulatory Indifference Hurts Vulnerable Communities."

Practically speaking, from my end, compliance with both these regulations would require me to obtain a loan for $5 million that would add equipment that would not reduce our cost, improve our product, increase our sales, or provide any health benefits for our employees or neighbors. It would be impossible for us to obtain a loan of this size that would not provide us with any benefits. I spent the last 2 years trying to obtain financing for kiln renovation, which would reduce our natural gas cost by approximately $500,000 per year, but it took me 2 years to find a financial institution willing to lend us the money. The cost of compliance with both these regulations at the same time would put us out of business, and we are not the only ones.

If the inability to comply would cause us to go out of business, more than $8 million would be lost from our local community; we would pay over $4 million in wages to 80 families. Many of our employees would have difficulty finding other employment due to their low level of education.

However, if these regulations would save lives of our workers or neighbors, they would be worth it, but for both of these rules, the agencies themselves have data that show that the benefits of these regulations is minimal or nonexistent for our industry.

So, I guess I would like to think that after 100 years of providing good employment, paying taxes, and trying to be a responsible corporate entity, that someone in the government could look at the cumulative effect of this regulation and help us. Thank you.

[The prepared statement of Ms. Whitacre-Kaboth follows:*]

***Note:** Supplemental material submitted with this prepared statement is not reprinted in this record but is on file with the Committee, and can also be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104519.

Testimony of
Janet Whitacre Kaboth
President, CEO and Chairman of the Board
Whitacre Greer Company
Alliance, Ohio

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

Date:	**February 24, 2016**
Time:	**3:00 P.M.**
Location:	**Room 2141** **Rayburn House Office Building** **Washington, D.C.**
Title:	**Hearing on "Triple Threat to Workers and Households: Impact of Federal Regulations on Jobs, Wages and Startups."**

Chairman Marino, Ranking Member Johnson and distinguished Members of the Subcommittee, good afternoon and thank you for inviting me to testify on this important issue. My name is Janet Whitacre Kaboth. I am the President, CEO and Chairman of the Board of Whitacre Greer Company, which has manufactured clay products in Northeastern Ohio since 1916. The Company has been owned and operated by my father's family, the Whitacre family, since its beginning, and is a Woman Owned business. One of our founders, J. J. Whitacre, served as the elected representative to Congress from the 16th District in Ohio from 1910 to 1914.

As we celebrate 100 years in business, we are very proud of our heritage. We operate a manufacturing facility in Alliance, Ohio that employs approximately 80 people. We manufacture firebrick for the inside of masonry fireplaces and paving brick. In Washington, D.C., paving bricks made by Whitacre Greer form the sidewalks along Pennsylvania Avenue all the way from the Capitol to the White House. Our bricks are at the Statue of Liberty on Liberty Island, and at the Olympic Parks in Atlanta and Salt Lake City. Last year, we were awarded a Business Excellence award by the Canton Regional Chamber of Commerce.

I am here on behalf of my company and the brick industry as a whole, as I serve on the Board of the Brick Industry Association, the only national trade association representing clay brick and paver manufacturers and distributors. The U.S. brick industry has had many peaks and valleys through the years. According to the 2012 Annual Brick Industry Report there are currently only 43 companies that produce brick who operate 131 plants in the United States, compared to 209 plants that were operating in 1995. The companies like mine that continue to operate have been in business for close to 100 years or more. Our industry has changed greatly over these many years due to changes in product lines and market conditions, but also due to regulations that have been passed in recent years that can make it difficult to stay in business.

My job as President, CEO and as one of the owners of the business is to ensure to the best of my ability that Whitacre Greer Company is prepared to succeed for the next 100 years. We are a very small company within the brick industry, with only one plant that has two kilns. We focus our sales on smaller niche markets within the industry. We are in the middle of the second of five phases of modernization of our production facility to allow us to continue to exist over the longer term. Because we have limited financial resources, we have had

to spread our modernization effort over phases and focus on areas that will produce the most improved results, which will allow us to finance the next phase.

Our industry is committed to doing our share and to doing the right thing for our employees, our vendors, customers and communities. However, as our industry continues to struggle to come out of the Great Recession, we—like many other industry sectors—have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is critical that every dollar we spend gives us back some benefit.

There are many regulations that affect my plant and my industry now and will in the coming years, but I am going to focus on only two regulations today—the air toxics standard, or brick MACT, developed by the U.S. Environmental Protection Agency (EPA) and the proposed revisions to the silica permissible exposure limit, or PEL, expected to be issued very soon by the Occupational Safety and Health Administration (OSHA).

These two rules, and their crippling impact on the U.S. brick industry that I will describe below, illustrate how workers and local communities can be devastated by new regulations even when jobs are being created at the national level and the overall unemployment rate is low. For workers in local communities, particularly those employed by small businesses, new regulations developed using a "one size fits all" model are a big problem. Federal agencies cannot simply assume that companies can afford to comply with regulatory requirements, that companies will be able to comply, or that the benefits of a rule will make it worthwhile. They need to understand the local impacts of their rule on real people whose real lives may be ruined by losing their job.

EPA's Brick MACT Rule

The current brick MACT rule is the second time in a decade that EPA imposed major requirements on our industry. The agency finalized a rule in 2003, our industry complied with the rule in 2006, but in 2007 the courts vacated the rule. Our industry was in compliance with that rule when it was thrown out—and had installed approximately 80 of the 100 controls that now exist in our industry.

We estimate that the brick industry spent over $100 million in capital and operating costs to comply with the vacated 2003 MACT. EPA used the performance of the controls we spent so much money to install to establish even

lower limits for its current rule, which it finalized in late 2015. For many brick companies, this will require them to tear out the controls they spent millions on, and purchase even more costly new controls, in order to produce a very slight benefit to the environment.

While the brick MACT does allow a health based standard for some of the emission types, full compliance will probably require the installation of control devices for particulate matter and mercury for most kilns. The combined cost of these devices is about $2.2 million per kiln. For our plant in Alliance, Ohio the estimated cost is $4,000,000 for control devices and operation. This represents 23% of our current net worth. The investment of $4,000,000 would eliminate at most 4 pounds of mercury per year. On an individualized basis, this is probably less than the amount of mercury walking around the plant in our teeth every day.

OSHA's Silica PEL Rule

In September 2014, OSHA proposed revisions to the current PEL for silica. This reduction was proposed as a "one-size fits all" type regulation that is typical for OSHA. OSHA estimates costs for this rule to average $38,000 per year annualized over a ten year period for a brick plant. Data gathered prior to the Great Recession from the proposed regulation show the profit percentage for the brick industry to be 4.41% and the annualized cost for compliance would be 8.05% of profits. Actual financial results from Whitacre Greer since 2002 show that our average profit for this time frame is 1.06% and the annualized costs from OSHA represent **33%** of this average profit. Industry experts estimate that OSHA is underestimating the costs of the silica PEL by as much as 20 to 50 times.

OSHA has been provided a significant set of studies conducted over the last 75 or more years demonstrating that the response to the silica used in the brick industry is very different from other industries. OSHA even acknowledges the markedly reduced incidence rate of silicosis from our industry. They also acknowledge, but separately, the disproportionate costs of their rule. However, they do not put those two pieces of data together and consider our industry separately when attempting to show that this rule is justified.

Compliance with the proposed silica regulation will require the installation of engineering controls and other items which will require an investment based upon the OSHA estimates of $906,530 in the first year, which should be directly

considered as opposed to only considering the annualized amount that OSHA uses. Even using OSHA's numbers, I calculated that given current bank lending formulas and procedures, Whitacre Greer would be unable to borrow the first-year capital costs needed.

In both cases, the statutes that direct EPA and OSHA to develop these rules have flexibilities contained within them to allow these agencies to meet their obligations without destroying our industry. We just don't know how to make them USE those flexibilities, and to take the time to do it right, rather than just doing it quickly and to not take a "one size fits all" approach that will destroy an industry.

Compliance with these regulations threatens the continued existence of many small companies in our industry, including mine. In fact, compliance with both of these rules, at the same time, is likely to devastate our entire already-threatened industry, where 75% of the companies are small businesses. This is well-documented in a report issued earlier this month by the U.S. Chamber of Commerce entitled *Regulatory Indifference Hurts Vulnerable Communities*. The report, which I include as an attachment to my testimony today, examines the burdens of complying with the EPA and OSHA rules for Whitacre Greer and other brick plants in comparison with the slight benefits of the two rules. The report concludes that, in the case of the brick industry, compliance with the EPA and OSHA rules is likely to cause more harm than it does good.

What is the Real Harm of the EPA and OSHA Rules?

Practically speaking, compliance with both these regulations would require me to obtain a loan for $5,000,000 to add equipment that would not reduce our costs, improve our product or increase our sales. Additionally there would be no health benefits for our employees or our neighbors. It would be impossible for us to obtain a loan of this size that would not provide us with any benefits at all. I have spent the last two years trying to obtain financing for a renovation of one of our kilns. This renovation will reduce our natural gas cost by approximately $500,000 per year, yet it took me two years to find a financial institution willing to lend us the money. The cost of compliance with both regulations at the same time would put us out of business, and we are certainly not the only brick company placed in this situation by the new regulations.

All the jobs at our facility provide our workers with a steady paycheck, good health insurance where each employee pays 10%, a 401 (k) where all employees receive 4% of their annual wages regardless of any individual contribution, and a profit sharing plan where 25% of the plant profit is split equally among all employees. Many of our employees have never graduated from high school and would have great difficulty finding similar employment without significant additional training. We are currently offering to pay the cost in full for any employee that desires to obtain more training in any area. We also offer a state-recognized apprenticeship program. We value our employees and have spent a great deal of time and effort over the last few years to improve our operations and continue to make our company a good place to work. We try very hard to be a good employer and a good neighbor in our community.

If the inability of complying with both these regulations causes Whitacre Greer to close our doors, more than $8,000,000 will be lost from our local community. We pay over $4,000,000 in wages to 80 families. Many of our employees would have difficulty finding other employment due to their low level of education. Also important in our local area is our payments of approximately $1,000,000 per year to local coal mining operations for our raw materials of clay and shale. Our purchases help them stay in business while they try to deal with their own rapidly-growing burden of expanding regulations.

We are certainly not alone in facing these challenges to our continued survival. One of my colleagues, Creighton McAvoy, recently testified in front of the House Energy and Commerce Committee about the impacts these regulations will have on his brick company.[1] McAvoy Brick employs 26 workers, most of them members of the United Steelworkers union, at its plant in Phoenixville, Pennsylvania. According to Mr. McAvoy, the company has an annual payroll of nearly $1,000,000, pays about $60,000 per year in taxes to local schools, and provides some $20,000 each month in health benefits. For a town like Phoenixville, which is smaller than Alliance, the loss of middle-class union jobs, local taxes, and health benefits is a serious matter. As Mr. McAvoy testified:

> You may think that the loss of our small brick company will not make any difference in our overall economy. However, if

[1] Testimony of Creighton McAvoy before the House Committee on Energy and Commerce, Subcommittee on Energy and Power, Hearing on H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act, February 3, 2016.

> McAvoy Brick is required to close our doors, more than $2.8 million will be lost from our local economy. We pay over $1 million in wages for 26 families. Many of these employees will have difficulty finding other employment.[2]

If these two regulations would save lives—the lives of our workers or our neighbors—it would be worth it. However, for both these rules, the agencies themselves have data that show that the benefit of these regulations is minimal or non-existent for the brick industry. This leads to my constant question concerning the regulatory development process: is anyone looking at the total impact of all these regulations on an industry and the communities where it is located?

I would like to think that after almost 100 years of providing good employment, paying taxes and being a responsible corporate entity that someone in our government could look at the cumulative effect of regulation compliance and help us.

Thank you for allowing me this time. I will be happy to answer any questions you may have.

[2] *Id.*

ATTACHMENT

BRICK BY BRICK:

Communities Crumble Under Out of Touch Federal Regulations

It is time for Congress to demand that the Environmental Protection Agency (EPA) and other federal agencies look at the long-term impacts of their regulations on real people, in real communities. Only by understanding how past regulatory rulemakings have affected American industries and their surrounding communities can the public see how additional requirements may impact their lives.

Background:
When EPA and the Occupational Safety and Health Administration (OSHA) proposed rules that threaten the survival of many brick manufacturing plants in the U.S., the Chamber conducted an in-depth study on the impacts of these rules on specific plants. The relatively small size of the brick industry, the absence of foreign competition, and the stability of labor and material costs allowed us to identify the direct impact of regulations on brick companies and their employees.

The net result of the EPA and OSHA rules is that communities with brick plants will be worse off than they were before the two rules were written. The nation's air quality and workplace health will not be improved in any discernable way, yet local communities will feel the loss of jobs by the shuttering or downscaling of brick plants. Potentially thousands of workers in and outside of communities where brick plants are located will be deprived of middle-class jobs and benefits. This type of rule—one that does vastly more harm than good—is the type of rule that should never be written and obtain the force of law.

Recommendations:
EPA needs to abide by existing law and conduct in-depth employment analyses as required by Section 321(a) of the Clean Air Act. This type of analyses provides Congress and the public with information about the impacts its regulations have on businesses, workers, and communities. Other federal agencies should also be required to conduct analogous evaluations.

Congress should enact the **Regulatory Accountability Act of 2015 (RAA)**, which would **1)** improve regulatory transparency by requiring agencies to invest more effort earlier in gathering data, evaluating alternatives, and receiving public input about the costs and benefits of proposed rules; **2)** provide stakeholders with a way to confront unfounded assumptions that agencies rely on to make their proposed rules seem less costly and/or more beneficial; and **3)** keep agencies honest about the claims they make to support new regulations and prevent new rules that will do more harm than good.

Read the full report *Regulatory Indifference Hurts Vulnerable Communities* at **www.uschamber.com/etra**.

U.S. CHAMBER OF COMMERCE
Environment, Technology & Regulatory Affairs

The Policy Implications of Our Findings

The brick industry's experience with EPA and OSHA rules illustrates how several factors have come together over time to make our regulatory system produce nonsensical regulatory outcomes.

1. In the 1970s, Congress wrote sweeping new laws that were designed to broadly benefit all Americans, such as the Clean Air Act and the Occupational Safety and Health (OSH) Act. These laws reflected the view of Congress and the American people that environmental protection and worker health and safety were important factors that needed to be balanced against traditional economic priorities. Congress knew the new laws would have significant adverse economic impacts on newly regulated industries and communities, but expected they would yield massive national health and safety benefits to all Americans.

2. Congress gave federal agencies broad authority to implement these new laws, while also allowing agencies some discretion and flexibility in implementing them.

3. The federal agencies that write the rules implementing laws—in this case EPA and OSHA—interpret their mission to take priority over all competing considerations.

4. Over time, the courts have been more and more willing to defer to agency decision-making. Advocacy groups increasingly rely on lawsuits to get agencies to pursue ever more stringent rules without any regard for other policies or interests. In the case of the brick industry, an advocacy group sued EPA, had the 2003 Brick MACT overturned, and forced EPA to develop an excessively strict rule that does far more harm than good.

5. EPA and OSHA both imposed stringent requirements that not only were based on groundless, unproven assumptions, but that arrogantly refused to acknowledge local harms that far outweigh any nationwide benefits.

6. Thus, instead of developing rules that trade off some localized sacrifice in order to achieve substantial national benefits—the type of regulation intended by Congress when it wrote the Clean Air Act and the OSH Act in the 1970s—federal agencies now write needlessly stringent rules that indiscriminately shutter industries and devastate communities while delivering little or no real benefit to the country as a whole.

7. Regulated entities like brick companies have few opportunities to effectively challenge the many assumptions agencies make about the low cost and high benefits of a rulemaking. Agencies ignore adverse comments, and courts defer to agency decisions. Agencies' groundless assumptions typically become obvious after the adverse effects of a poorly written rule manifest themselves. If the rule does more harm than good, there is little recourse for affected parties, since agencies rarely take existing rules off the books.

Mr. ISSA. Thank you. Mr. Meyer.

TESTIMONY OF JARED MEYER, FELLOW, ECONOMICS21, MANHATTAN INSTITUTE

Mr. MEYER. Chairman Issa, Ranking Member Johnson, and other Members of the House Judiciary Committee, thanks for giving me the opportunity to give testimony on how the current model of Federal regulation stands in the way of millennial entrepreneurs. Millennials have been called the startup generation, but few young Americans have followed through on their entrepreneurial dreams. About two-thirds of millennials want to work for themselves at some point. Yet less than 4 percent of private businesses are at least partially owned by someone under the age of 30, the lowest annual proportion on record.

Government policy, particularly in regards to regulation, ignores the reality of a 21st century economy and continues to hold back millennials' economic opportunity. Congress has granted executive and independent agencies freedom to regulate with minimal oversight, and these agencies consistently understate the costs that their pronouncements place on young Americans. It is impossible to know the full costs of America's 175,000-page Code of Federal Regulations because executive agencies refuse to take count.

For example, during 2014, only 16 of the over 3,500 rules published in the Federal Register had a cost analysis. This lack of oversight occurred even though there were 290 significant rules and 69 economically significant rules that year. These types of rules generally have over $100 million in annual negative effects on the economy, and are supposed to undergo rigorous review.

Agencies are also increasingly acting as legislators. In 2015, there were over 50 regulations for each law that Congress passed. This imbalance shows the need for Congress to take back its authority from agencies. Public review and transparency requirements do not apply to agency guidance documents, memorandum, or notices.

These growing types of shadow, or also called dark matter, regulation lack transparency, even though they can impose substantial costs on young Americans. This negative effect can be seen in the Department of Labor's efforts to make it more difficult for independent contractors to work.

The Labor Department recently issued an administrator's interpretation, which did not have to go before the public for comments; that downplays a lack of control over workers' hours as a determinant in employment status. The flexibility that independent contractor status offers workers is vital for many industries, including the emerging sharing economy. The sharing economy's embrace of technology, convenience, and flexibility embodies many young Americans' economic ideal. While some workers use these platforms full-time, the vast majority use them for part-time work or supplemental income. For about the 70 percent of young adults who experience an average change of over 30 percent in their monthly incomes, the opportunity to smooth out earnings to meet rent, pay down student loans, or fund a new business venture is a benefit of the sharing economy that must be protected.

Young Americans realize how out of touch regulators are with today's economy. If you look at it, only 18 percent of millennials believe that regulators primarily have the public's interest in mind. The worker classification needs to be sorted out by Congress, not courts or unaccountable executive agencies. The alternative is the crippling of economic opportunity by executive agencies who are set on incorrectly classifying the vast majority of new economy workers as employees.

The House Judiciary Committee deserves credit for establishing a task force on executive overreach, as there are many ways that Congress can regain control over Federal agencies and restore lost economic opportunity for millennials. Part of the reason for the ineffectiveness of previous reforms is the inherent incentives that agencies have to expand their reach. Internal regulatory reviews have not led to meaningful reform, but how could they have? The hands-off approach that Congress has given agencies provides little incentive for self-control.

The three main priorities for meaningful regulatory reform should be slowing the continued growth in the cost and number of regulations, repealing outdated and burdensome regulations, and giving the public a greater say in agencies' actions. Many promising regulatory reforms have already been introduced in the House. The Regulatory Predictability for Business Growth Act, the Regulatory Accountability Act, REINS Act, Red Tape Act, and SCRUB Act, all address at least one of these important priorities.

Young Americans need a stronger voice in the regulatory process, and their elected representatives can provide that check. Millennials value transparency, democracy, and accountability. It is long past time for Congress to apply these principles to U.S. regulation.

Thank you for the opportunity to provide testimony, and I look forward to continuing the discussion.

[The prepared statement of Mr. Meyer follows:]

Congress Needs to Stand Up for Millennial Entrepreneurs

Jared Meyer
Fellow, Economics21
Manhattan Institute for Policy Research

Testimony Submitted to the House Judiciary Committee

Subcommittee on Regulatory Reform, Commercial and Antitrust Law

February 24, 2016

Introduction

Chairman Marino, Vice-Chairman Farenthold, and other Members of House Judiciary Committee, thank you for the opportunity to give testimony on how the current model of federal regulation stands in the way of millennial entrepreneurs. I am a fellow at Economics21 at the Manhattan Institute for Policy Research and am the coauthor, with Diana Furchtgott-Roth, of *Disinherited: How Washington Is Betraying America's Young*.[1] Since this summer, I have traveled across the country and heard millennials talk about the economic problems they are facing and their plans for the future.

The American economy is changing, and millennials' attitudes about work and their careers are changing with it. The rapid rise of the so-called "sharing economy" embodies many young Americans' new economic ideal—one driven by technology, convenience, and flexibility. However, government policy, particularly in regards to regulation, ignores the realities of a 21st century economy and continues to hold back millennials' economic opportunity.

Congress has granted executive and independent agencies freedom to regulate with minimal oversight. Agencies have taken advantage of this delegation by utilizing flawed rule-making processes that mislead the public.

To make matters worse, these agencies consistently understate the costs that their pronouncements place on young Americans. Congress must to take steps to reassert its authority over the economy by reining in the accelerating growth in federal regulation. At the very least, Congress needs to act as a countervailing weight to the pro-regulation bias that permeates agencies. Millennials have entrepreneurial dreams, and their elected representatives need to take these steps to help them realize their goals.

Innovation Empowers Consumers

Before exploring how regulations hold back millennials' economic opportunity, it is important to show how technology has made today's economy more consumer-friendly. This means that regulators do not have to play as large of a role in protecting the public. This is because the main—or at least stated—justification behind federal regulation is consumer protection. A few decades ago, before ubiquitous Internet

[1] Diana Furchtgott-Roth and Jared Meyer, *Disinherited: How Washington Is Betraying America's Young*, Encounter Books, May 12, 2015.

access, this reasoning may have made some sense. But in today's economy, information is in consumers' hands due to the Internet's user-generated content.

In the past, customers controlled the buying decision, but products or services and information about them were controlled, or at least heavily influenced, by businesses. Thanks to the disruption caused by Internet access, consumers have much greater access to information than ever before. As the power dynamic continues to shift in favor of customers, the need for an expansive regulatory framework further diminishes.

The Internet's promotion of user interaction, sharing, and collaboration is behind this change in market power. The sharing economy naturally extends these capabilities by embracing robust feedback systems.

Two of the brightest stars of the sharing economy, Uber and Airbnb, use post-service, dual-feedback systems where customers and service providers both leave reviews. This process reinforces positive behavior and weeds out those who make transactions difficult or unenjoyable. Customers learn that they can trust these reviews, and feedback allows companies to cut ties with those who consistently receive negative criticism.

Even with this monumental shift in the economy, regulators continue to operate as if Yelp, Google Reviews, and Angie's List do not exist. Regulators also ignore the reality that firms cannot stay in business if they disappoint customers. Those who feel that a good or service they purchased did not live up to their expectations are just a few clicks away from letting anyone in the world who has Internet access hear about their frustration. For a business, this is a punishment as great, or greater than, a negative report from a regulator. The user-generated content that populates review sites and social media has even been referred to as "word of mouth on steroids."[2]

People are careful about which sites and reviews they rely on. Peer-to-peer online interaction is similar to word-of-mouth reviews—they both rely on trust. Because feedback is increasingly linked to reviewers' public Internet profiles, the level of faith in reviews has greatly improved. Ten years ago, who would have thought that someone would willingly enter an unlicensed stranger's car or stay at a stranger's home?

It is no coincidence that the Internet technology field offers the most opportunities for young Americans, and that it is also the least regulated. If the innovative entrepreneurs

[2]Jim Blasingame, *The Age of the Customer: Prepare for the Moment of Relevance*, SBN Books, January 6, 2014.

behind some of today's most popular Internet companies needed to gain government's permission to innovate, or comply with as many regulations as the energy and manufacturing sectors, we would likely not have Twitter, Snapchat, Facebook, or even Apple. These are pioneering companies that many young Americans use on a daily basis for everything from entertainment to news.

The policy President Bill Clinton endorsed of letting Internet companies develop mostly free of regulatory burdens contributed to the sector's rapid growth—and the consumer empowerment that came with it. Internet companies have still managed to largely escape regulation, though this is rapidly changing.

Regulations that affect Internet companies are, of course, promulgated in the name of consumer protection, but they threaten to unravel the increased access to information brought about by the peer-to-peer economy. Efforts to cripple job creation by making it more difficult to hire independent contractors are another example of policymakers regulating in search of a problem that is simply not there.

The public is starting to catch on to how out of touch regulators are with today's realities. Perhaps because of the promising rise of popular sharing economy services, and the subsequent hostile response of some legislatures, only 18 percent of millennials believe regulators primarily have the public's interest in mind.[3] Young people realize that many regulations serve to protect special interests, not public safety. Millennials want companies to be held liable for harming consumers, but they do not support regulations that keep out new competition or dictate how entrepreneurs must meet their customers' needs.

When crafting regulation, policymakers need to keep in mind that the relationship between consumers and service providers has been transformed for the better. Rather than keeping consumers safe, regulators are threatening the growth of the peer-to-peer system that has proven to be the most effective way to increase consumers' access to information.

Regulations Stand in the Way of Millennial Entrepreneurs

The once-dynamic American economy is stagnating. The Brookings Institution reports that business startup rates are much lower now than they were in the second half of the

[3] Emily Ekins, *Millennials: The Politically Unclaimed Generation*, Reason-Rupe, July 10, 2014.

20th century.[4] Business dynamism, determined by firm entry, firm exit, and job reallocation rates, has also declined. This fall in entrepreneurship is leading to the aging of American businesses. In 1992, 23 percent of firms had existed for 16 years or more. By 2011, this percentage had increased to 34 percent.[5]

New business formation is vital for economic growth. Young Americans desperately need more employment opportunities, as 20- to 24-year-olds still face an unemployment rate of over 8 percent.[6] For teenagers, the unemployment rate is 16 percent.

A decline in entrepreneurship is troubling for the economy for a variety reasons—especially when starting a business is seen as a major part of the American dream for many millennials.

Millennials have been called the most entrepreneurial generation. While this may be true based on their desires to start businesses and their near-universal respect for entrepreneurs such as Steve Jobs, few young Americans have followed through on their entrepreneurial dreams. Millennials' failure to start businesses follows the troubling trend of declining entrepreneurship and dynamism in the U.S. economy.

A Bentley University survey of millennials found that 66 percent of respondents want to start their own business.[7] Echoing these findings, Deloitte found that about 70 percent of millennials envision working independently at some point in their careers.[8]

Yet, as of 2013, only 3.6 percent of private businesses were at least partially owned by someone under the age of 30. This is the lowest proportion since the Federal Reserve began collecting data nearly a quarter-century ago.[9]

A major factor that hinders the ability of young entrepreneurs to start new businesses and work for themselves is government regulation. While it is difficult to gain a full picture of the federal regulatory burden, it is undoubtedly vast, as the U.S. Code of

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[4] Ian Hathaway and Robert E. Litan, *Declining Business Dynamism in the United States: A Look at States and Metros*, Brookings Institution, May 2014.
[5] Ian Hathaway and Robert E. Litan, *The Other Aging of America: The Increasing Dominance of Older Firms*, Brookings Institution, July 31, 2014.
[6] *The Employment Situation*, Bureau of Labor Statistics, February 5, 2016.
[7] *The Millennial Mind Goes to Work*, Bentley University, November 11, 2014.
[8] *The Deloitte Millennial Survey*, Deloitte, January 2014.
[9] Ruth Simon and Caelainn Barr, *Endangered Species: Young U.S. Entrepreneurs*, The Wall Street Journal, January 2, 2015.

Federal Regulations is over 175,000 pages long.[10] Even though the number of pages of regulation has steadily accumulated since the 1970s, five of the six all-time-high annual page counts have occurred during President Obama's tenure.[11]

These thousands of pages of regulation are not simply legalese. Instead, there are over one million commandments from Washington in the form of restrictive words such as "must," "cannot," or "shall."[12] Most of these restrictions have little to no connection to protecting public safety. Starting and running a business requires a lot of time and hard work. Attempting to comprehend which of these million restrictions apply to their businesses is a waste of young entrepreneurs' valuable time.

While evaluating restrictive terms in the Code of Federal Regulations is an imperfect way to measure the level of government control over the economy, it offers an approximate guide to the extent of regulation. Page counts, another approximate guide, can be misleading since regulations that are only a few paragraphs long could have much greater effects than those that stretch for pages.

But the reason that Americans must rely on imprecise measures is that the vast majority of regulations are never subjected to even a basic cost-benefit analysis. This creates an incomplete, understated picture of the total regulatory burden. For example, during 2014 only 13 of the over 3,500 rules published in the Federal Register had both cost and benefit analyses and an additional 3 rules only had cost analyses.[13]

This lack of oversight occurred even though there were 290 significant rules and 69 economically significant agency rules in 2014. These types of rules generally have over $100 million in annual negative effects on the economy, and they are supposed to go through rigorous internal or Office of Information and Regulatory Affairs cost/benefit analyses.[14] This problem is not a recent phenomenon—since 2001, less than 3 out of every 1,000 regulations has had an accompanying cost and benefit analysis.

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[10] *Code of Federal Regulations Page Breakdown – 1975 through 2014*, Office of the Federal Register, 2015.
[11] Clyde Wayne Crews Jr., *Ten Thousand Commandments: 2015 Edition*, Competitive Enterprise Institute, May 8, 2015.
[12] *Regdata: Historical Regulation Data*, Mercatus Center at George Mason University, February 2016.
[13] Clyde Wayne Crews Jr. *Mapping Washington's Lawlessness 2016*, Competitive Enterprise Institute, December 2015.
[14] Maeve P. Casey, Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register, Congressional Research Service, July 14, 2015.

With federal regulation conservatively estimated to cost the economy $1.9 trillion a year,[15] there is no excuse for this level of regulation escaping basic cost/benefit analyses. While regulatory compliance—and the lost economic growth that comes with it—are often referred to as a hidden tax, the costs of federal regulations are becoming clearer as executive and independent agencies' reach into young Americans' lives grows.

Another problem with America's regulatory system is that agencies are increasingly acting as legislators. Over the decade stretching from 2005 to 2014, the average annual number of promulgated regulations was 26 times greater than the number of enacted laws. In 2015, there were over 50 new regulations for each law that Congress passed.

Agencies are also able to avoid transparency and public review. The public notice and comment requirements under the Administration and Procedure Act do not apply to agency guidance documents, memorandum, or notices and bulletins. This "regulatory dark matter" or "shadow regulation" does not show itself in traditional measures of regulation, even though they can impose substantial burdens on young Americans.[16]

Barriers to Flexible Work

The U.S. Department of Labor's efforts to make it more difficult for independent contractors to work are one example of an executive agency misusing its delegated powers in a way that harms millennials. The Labor Department recently issued an administrator's interpretation, in the form of a blog post that was effective immediately, to clarify the definition of an independent contractor. It states that "most workers are employees," not independent contractors.[17]

The popularity of the sharing economy has propelled the distinction between independent contractors and employees into the forefront of policy. This is an important debate that the public needs to take part in through the legislative process. Congress cannot continue to let unelected bureaucrats determine the future of America's labor market.

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[15] Clyde Wayne Crews Jr., *Tip of the Costberg*, Competitive Enterprise Institute, December 2015.
[16] Clyde Wayne Crews Jr. *Mapping Washington's Lawlessness 2016*, Competitive Enterprise Institute, December 2015.
[17] David Weil, *Administrator's Interpretation No. 2015-1*, Department of Labor, July 15, 2015.

Right now, workers are either categorized as employees or independent contractors. Employees are given many protections and benefits that are not available to contractors. In exchange, employers set the conditions of workers' terms of employment. On the other hand, the independent contractor model provides workers with more control and flexibility.

The distinction between contractors and full-time employees can have important implications for millennials. The American Dream may have once been finding employment at a large company, working there for a few decades, and then retiring with a defined-benefit pension, but now millennials' American Dream looks much different than their parents' and grandparents'. New opportunities to change or advance one's career are prioritized, and individualized, flexible work arrangements are the model of the future.

The Labor Department's new interpretation, which did not have to go before the public for comments, formally accepts the so-called "economic realities" six-part test for determining whether workers are employees or contractors.[18] At the same time, it downplays one of the six criteria, a lack of control over workers' hours, as a determinant of employment status.

Shifting from independent contractors to employees is costly. The Labor Department's Employment Cost Index shows that providing benefits adds around 30 percent to the cost of employing a worker.[19] This estimate is not an overstatement. When MyClean (the Uber of housecleaning) moved from independent contractors to full-time employees, its labor costs increased 40 percent, according to its CEO.[20] A similar company, Homejoy, shut down this year due to labor classification disputes.[21]

Something similar could happen to Uber, as one California driver who brought a case against the company was legally classified as an Uber employee.[22] If this ruling against Uber's current business model is extended to the rest of the company and the emerging sharing economy as a whole, many other startups and young workers will suffer.

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[18] *Fact Sheet 13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, Department of Labor, May 2014.
[19] *Employment Cost Index*, Bureau of Labor Statistics, October 2015.
[20] Kate Rogers, *What the Uber, Lyft lawsuits mean for the US Economy*, CNBC, March 16, 2015.
[21] *Homejoy says goodbye, and thank you*, Homejoy, July 17, 2015.
[22] *Uber Technologies, Inc. vs. Barbara Berwick*, California Labor Commission, June 16, 2015.

This could very well happen. Uber faces a class action lawsuit *O'Connor v. Uber Technologies Inc.* over its employment classification practices.[23] Lyft just settled its pending employment classification class action lawsuit *Cotter v. Lyft Inc.* for $12.25 million.[24] Lyft can continue to classify its drivers as independent contractors—a designation that is crucial to the sharing economy's success. But even though the settlement does not carry any legal precedent, it will lead to additional lawsuits and uncertainty for other sharing-economy companies. This will raise the costs of these services, costs that will be passed on to consumers.

The flexibility that independent contractor status offers workers is vital to the sharing economy's success. While some workers use these platforms full time, the vast majority use them for part-time work or supplemental income. About 8 in 10 Lyft drivers choose to drive 15 hours a week or less, and half of Uber drivers use the platform for less than 10 hours a week. Independent contractor status allows the decision of when or for how long to work to be controlled by workers, not companies.

Control over one's hours is a valuable option that needs to be maintained. When 600 Uber driver-partners were asked the question, "If both were available to you, at this point in your life, would you rather have a steady 9-to-5 job with some benefits and a set salary or a job where you choose your own schedule and be your own boss?," 73 percent said that they prefer flexibility over the traditional employment model.[25]

An analysis of its customers' bank accounts by JPMorgan Chase & Co. shows that one out of every 100 Americans earned income through a sharing economy platform in September 2015.[26] This is up from one in every 1,000 in October 2012. Over the three-year study, over 4 percent of Americans earned income through the sharing economy.

While the sharing economy still accounts for a small percentage of overall U.S. employment, the individualized work arrangements that it embraces make up a much larger, and growing, percent of the labor force.[27] For the 70 percent of Americans ages 18 to 24 who experience an average change of over 30 percent in their monthly incomes,

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[23] Edward Chen, *O'Connor v. Uber Technologies, Inc. et al., C13-3826 EMC*, U.S. District Court, Norther District of California, December 22, 2015.
[24] *Class Action Settlement Agreement and Release Case No. 3:13-cv-04065-VC*, January 27, 2016.
[25] Jonathan V. Hall and Alan B. Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States*, Uber, January 22, 2015.
[26] *Paychecks, Paydays, and the Online Platform Economy*, JPMorgan Chase & Co., February 2016.
[27] Will Rinehart and Ben Gitis, *Independent Contractors and the Emerging Gig Economy*, American Action Forum, July 29, 2015.

the opportunity to smooth out earnings to meet rent, pay down student loans, or fund a new business venture is a benefit of the sharing economy that must be protected.[28]

The Labor Department has muddled the once-clear distinction between employees and independent contractors. This move creates uncertainty and costly legal battles for businesses and workers. Moving these workers into an employer-employee relationship from their current—but threatened—independent contractor status would substantially hinder the growth of sharing economy, not to mention the work opportunities and consumer benefits that it provides.

The sharing economy's growth has been propelled by the massive decrease in transaction costs that came from technological progress. Companies such as Uber and Airbnb offer the technical platform and support to allow transactions between buyers and sellers or service providers to easily take place. For this reason, these types of companies are often referred to as "intermediaries."[29]

Unlike employees, independent contractors are not entitled to minimum wage, overtime pay, unemployment insurance, or workers' compensation. But extending these employment protections to independent contractors makes no sense.

Since intermediaries do not control workers' hours, and determining how much someone is actually working solely for the intermediary is difficult (if not impossible), minimum wage and overtime pay requirements are inapplicable to the companies' workers. Additionally, one of the benefits of the sharing economy is that supply can easily fluctuate to meet ever-changing demand.

Because of the option of flexibility, independent contractor work for intermediaries is often transient, or done in addition to other work, so there is little reason to compel employers to fund unemployment insurance benefits. Intermediaries' workers also usually complete jobs off-site and use their own materials. For these reasons, workers' compensation systems should remain optional—not mandatory—for intermediaries.

When debating the future of worker classification, lawmakers should also resist calls to amend federal antitrust laws to allow independent contractors to collectively bargain. Collective bargaining is currently reserved for employees, who are able to unionize if a majority of an identified group of employees wants to be represented by a union.

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[28] *Paychecks, Paydays, and the Online Platform Economy*, JPMorgan Chase & Co., February 2016.
[29] Seth Harris and Alan Krueger, *A proposal for modernizing labor laws for 21st century work: The "independent worker"*, The Hamilton Project, December 2015.

Successful collective bargaining efforts would likely take away many benefits of the flexible, entrepreneurial work arrangements that independent contractors enjoy. Independent contractors are allowed to unionize, but under federal labor law they cannot collectively bargain (though the Seattle City Council recently voted to extend collective bargaining to ridesharing and taxi drivers).[30]

This makes sense because independent contractors are all their own businesses. The reason antitrust law would have to be amended is that collective bargaining by independent businesses violates federal prohibitions against price fixing.

Why should independent contractors who do not want union representation be forced to follow and fund labor agreements that they do not support? Of course these workers should be allowed to join a union, as they are now, but it makes little sense to force them to adhere to collectively bargained agreements when they often work with more than one company and/or have another full-time job. Additionally, these workers have diverse priorities and work arrangements, even when they work with the same intermediary.

For example, working with Uber supplies the only source of income for 20 percent of Uber drivers.[31] But Uber earnings provide supplemental, non-significant income for 48 percent of drivers. Only about 5 percent of Uber drivers work with the company for over 50 hours in an average a week, whereas half of Uber drivers work for fewer than 10 hours.[32]

Those who use Uber for supplemental income and part-time work have vastly different concerns than those who use the service for full-time employment. If collective bargaining is allowed, which group's interests will the union represent? Majority rule could take away one of the cornerstones of the sharing economy—the diverse benefits that flexible work opportunities provide.

Many independent contractors who partner with intermediaries would prefer to have access to some portable benefits. Portable pensions already exist in the form of Individual Retirement Accounts and Simplified Employee Pension Plans. Portable

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[30] Nick Wingfield and Mike Isaac, *Seattle Will Allow Uber and Lyft Drivers to Form Unions,* New York Times, December 14, 2015.
[31] *Uber Driver Roadmap* 2.0, Benenson Strategy Group, November 14, 2015.
[32] Jonathan Hall and Alan Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States,* January 22, 2015.

health insurance, although expensive, exists through the Affordable Care Act. Social Security provides disability insurance.

Even with the existing options, the option to offer other portable benefits without being determined to be an employer is something that many sharing economy firms are interested in.[33] This ability would help firms attract and keep the best talent. Intermediaries could benefit from pooling their independent contractors to secure better rates for benefits such as auto, health, and disability insurance and savings and retirement programs. Unfortunately, intermediaries that offer such benefits are in danger of being classified as employers. A legal carve-out should be created to allow intermediaries to offer these benefits and still retain their non-employer status.

Regulatory overreach is not confined to the Department of Labor Wage and Hour Division's recent administrator's interpretation that downplays companies' lack of control over workers' hours and tasks as a factor in deciding employment cases. The National Labor Relations Board has, through a series of decisions, also made it more difficult to work as an independent contractor.[34]

Though both agencies are part of the Department of Labor and are actively working to stack the deck against independent contractors, their definitions of employment differ. The Internal Revenue Service and Treasury Department also use different measures to determine the status of work relationships. This ambiguity again shows the need for a single legislative action over increased, conflicting regulations.

The Labor Department and the National Labor Relations Board are trying to change the previously-clear distinction between employees and independent contractors. This, combined with the changing nature of work, leaves judges with the impossible task of dealing with these two agencies' guidelines as lawsuits work their way through the courts. The uncertainty the status quo creates harms many companies and their workers, both inside and outside the sharing economy.

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[33] *Common Ground for Independent Workers,* Medium, November 10, 2015.

[34] Chairman Pearce, Member Hirozawa, and Member McFerran, *Sisters' Camelot and Christopher Allison and IWW Sisters' Camelot Canvassers Union,* National Labor Relations Board, September 25, 2015;
Chairman Pearce, Member Hirozawa, Member Johnson, and Member Schiffer, *FedEx Home Delivery, an Operating Division of FedEx Ground Package Systems, Inc. and International Brotherhood of Teamsters, Local Union No. 671,* National Labor Relations Board, September 30, 2015.

The worker classification question needs to be sorted out by federal legislators, not courts or unaccountable executive agencies.[35] The alternative is the crippling of the sharing economy by executive agencies set on incorrectly classifying the vast majority of new economy workers as employees.

The sharing economy's growth is a bright spot in today's tepid economy. Workers value the freedom and flexibility that partnerships with sharing-economy companies provide. In order to promote an entrepreneurial workforce, Congress needs to use its powers to rein in the Labor Department and National Labor Relations Board.

Options for Reform

The House Judiciary Committee deserves credit for establishing a task force on executive overreach, as there are many ways that Congress can regain control over federal agencies and restore lost economic opportunity to millennials.[36] Though numerous regulatory reform proposals have already been introduced or received a vote, opponents have stopped the bills from becoming law.

Despite the claims of critics, the need for additional Congressional oversight and review is real. President Obama, though he campaigned on a promise to create a more efficient and transparent government, has failed to follow-through on this promise when it comes to the regulations that his executive agencies promulgate.

Regulatory Predictability for Business Growth Act

President Obama's regulatory reform efforts though executive orders sound impressive, but they have not been effective. His January 2011 executive order "Improving Regulation and Regulatory Review" states that, "Regulations shall be adopted through a process that involves public participation... [Each agency] shall endeavor to provide the public with an opportunity to participate in the regulatory process."[37] Even with this executive order, the public is still unable to participate in one of the major ways that agencies create new regulations—interpretive rules.

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[35] Ian Adams, *The Flexible Future of Work*, R Street Institute, November 10, 2015.
[36] *Resolution Establishing the House Committee on the Judiciary Executive Overreach Task Force of 2016*, House Judiciary Committee, February 3, 2016.
[37] *Executive Order 13563 – Improving Regulation and Regulatory Review*, Federal Register, January 21, 2011.

Interpretive rules are supposed to clarify or explain existing definitions or terms. This is why they are not subject to the Administrative Procedures Act, which gives certain requirements for proposed administrative rules involving public access and comment.

Problems arise because much of today's rulemaking does not have to go through public review. It is acceptable to use interpretations or memorandum to provide guidance on and clarification of existing regulation, but agencies currently use these tools to change regulations in ways that the public and Congress should have a greater say over. Regulatory actions that take place outside of the formal rule-making channels should not expand the scope of any law.

The Regulatory Predictability for Business Growth Act, introduced by Representative Steve Daines on June 3, 2015 with two co-sponsors, would amend the Administrative Procedure Act to allow for rules deemed "longstanding interpretative" (in effect for at least one year) to be subject to the general notice of proposed rulemaking, comment, and publication provisions the law.[38] When interpretive rules and guidance documents hold as much weight as they do today, as is shown by the Labor Department's blog post on independent contractors, it is important for pronouncements that alter previous rules to undergo public notice and comments.

Regulatory Accountability Act

Another executive order from President Obama includes a section on the importance of cost and benefit analyses.[39] Executive Order 13579 states, "Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative)."

The Regulatory Accountability Act, introduced by Representative Bob Goodlatte on January 16, 2015 with 21 co-sponsors, would give the public a greater role in the regulatory process and establish stronger reviews of claimed costs.[40] This would require agencies to adopt the least costly available method when implementing laws to produce

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[38] Sen. Steve Daines, *S. 1487 – Regulatory Predictability for Business Growth Act of 2015*, 114th Congress, June 3, 2015.
[39] Office of the Press Secretary, *Executive Order 13579 – Regulation and Independent Regulatory Agencies*, The White House, July 11, 2011.
[40] Rep. Bob Goodlatte, *H.R.185 – Regulatory Accountability Act of 2015*, 114th Congress, July 1, 2015.

a public benefit. The Act was passed by the House on January 16, 2015, and a companion bill was introduced by Senator Rob Portman and seven co-sponsors on August 6, 2015.[41]

Agencies would have to regulate in a way that is more open and transparent, since the Regulatory Accountability Act requires Information Quality Act compliance, the option for public comments, and on-the-record hearings for costly regulations. This transparency would ensure that agencies make decisions based on evidence, a goal that President Obama supports.

These requirements are not too much to ask for when it comes to regulations that inflict over $100 million in annual costs, as determined by the Administrator of the Office of Information and Regulatory Affairs. Agencies should not be free to do what they wish when their pronouncements place additional regulatory burdens on Americans.

The Congressional Review Act

The Congressional Review Act of 1996 was originally passed to give Congress a greater role in containing regulatory growth. The act, signed into law by President Clinton, provided Americans with another form of recourse against agencies that ignored Congressional intent.

However, the Congressional Review Act has not been an effective deterrent against excessive regulation. It was only successfully used once in 2001 to stop an Occupational Safety and Health Administration rule on workplace ergonomics.[42] Even though starting the review process is relatively easy, during the 113th Congress only two Congressional Review Act resolutions were introduced in the House and none were introduced in the Senate. This means the Congressional Review Act was used on less than .03 percent of all the 7,000 or so rules issued over that time.[43]

The 114th Congress did use the Congressional Review Act in an attempt to invalidate a NLRB rule that sped up union elections.[44] However, this joint resolution was vetoed by

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[41] Sen. Rob Portman, *S.2006 – Regulatory Accountability Act of 2015*, 114th Congress, August 6, 2015.
[42] *Public Law 107-5*, U.S. Government Publishing Office, March 20, 2001.
[43] Kevin Kosar, *Three Steps for Reasserting Congress in Regulatory Policy*, R Street Institute, March 2015.
[44] Sen. Lamar Alexander, *A Joint Resolution Providing for Congressional Disapproval under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the National Labor Relations Board Relating to Representation Case Procedures*, 114th Congress, February 9, 2015.

President Obama.[45] Even though the regulation was allowed to stand, the additional scrutiny provided by Congressional review is a welcome development that should occur more often.

Since the Congressional Review Act is not working in practice, further steps need to be taken to make regulatory accountability easier to achieve.

Regulations From the Executive In Need of Scrutiny Act

When it comes to economically-significant regulations, the Regulations From the Executive In Need of Scrutiny (REINS) Act, introduced on January 21, 2015 by Representative Todd Young and 171 co-sponsors, would ensure that Congress agrees with agencies' determinations that costly regulations are necessary.[46]

This type of legislation would help to alleviate the autopilot nature of federal regulation. Whereas Congress now has to explicitly vote down a regulation by using the Congressional Review Act, under the REINS Act Congress would have to voice approval within 70 days if a major regulation is to take effect. The act does include temporary exemptions for regulations that address a pressing national security or public safety need.

The threshold for the REINS Act's provisions to take effect is regulations that have over $100 million in annual economic costs. Because agencies have incentives to overstate the benefits of regulations and understate their costs, it is important to not change the standard to regulations that have a net cost on the economy, after accounting for the benefits claimed by the agencies, of over $100 million.

The REINS Act passed the House on July, 28 2015, and the Senate version, introduced by Senator Rand Paul on January 21, 2015, has 36 co-sponsors.[47] While major regulations that are deemed necessary by Congress will still be able to be implemented, REINS-style legislation could help to stop the uninterrupted growth in federal regulation. However, it would do nothing to address today's levels of regulatory accumulation.

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[45] Office of the Press Secretary, *Memorandum of Disapproval Regarding S.J Res. 8*, The White House, March 31, 2015.
[46] Rep. Todd Young, *Regulations from the Executive in Need of Scrutiny Act of 2015*, 114th Congress, January 21, 2015.
[47] Sen. Rand Paul, *Regulations from the Executive in Need of Scrutiny Act of 2015*, 114th Congress, January 21, 2015.

Regulations Endanger Democracy Act

Another section of President Obama's "Improving Regulation and Regulatory Review" executive order stated, "Agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible."

On this point, the Regulations Endanger Democracy (RED Tape) Act, introduced by Senator Dan Sullivan on August 5, 2015 with 22 co-sponsors, would help pare back outdated regulations.[48] The RED Tape Act would require agencies to eliminate at least one rule of equal or greater financial and administrative cost before issuing a new regulation or modifying an existing regulation.

There are international precedents for this bill. Canada has a one-for-one rule, meaning each new or amended regulation that increases the administrative burden on businesses must lead to an equal offset in other administrative burdens. Additionally, each new regulation must lead to an older regulation being removed.[49]

Across the Atlantic, the United Kingdom's recent Cutting Red Tape program has successfully eliminated over 2,400 regulations.[50] There are 18 other European countries that have joined the UK in calling for the European Union to cut unnecessary and outdated regulations.[51]

Even though all of the current RED Tape Act cosponsors are Senate Republicans, the international regulatory reform efforts received support from across the political spectrum. Cutting back regulations to promote opportunity for young Americans should not be a partisan fight.

Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act

To achieve its goal of reducing overall regulatory costs by 15 percent, the SCRUB Act, introduced by Representative Jason Smith on February 27, 2015 with 9 co-sponsors, would establish a bipartisan, presidentially appointed Retrospective Regulatory Review

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[48] Sen. Dan Sullivan, *S. 1944 RED Tape Act of 2015*, 114th Congress, August 5, 2015.
[49] *One-for-One Rule*, Government of Canada, September 9, 2015.
[50] *Cutting Red Tape*, Her Majesty's Government, November 27, 2016.
[51] *UK and 18 other EU countries call for business red tape reduction*, Department of Business, Innovation & Skills, November 27, 2016.

Commission to focus on major rules that are over 15 years old. The Commission would exist for five and a half years. During that time, it would evaluate whether old rules achieved their purposes, if the benefits of rules are outweighed by their costs, and if regulations are redundant, among other priorities.

The SCRUB Act also contains a version of the rule in, rule out requirement of the RED Tape Act, and it passed a House vote on January 7, 2016.[52] Retrospective review, another goal of the Obama Administration, would also be required to be performed within ten years for new regulations under the SCRUB Act.

Americans Need Congressional Action, Not Executive Orders

It is common for presidents to talk about implementing regulatory reform. But as the unbroken year-over-year growth in regulation has shown, this talk has done little to stop or even slow regulatory accumulation.

President Obama has repeatedly called for regulatory reform. Based on his rhetoric, it is surprising that he is opposed to all of the proposed bills listed above that have passed the House or Senate.[53]

Part of the reason for President Obama's ineffectiveness in reforming America's regulatory process is the inherent incentives that agencies have towards expanding their reach. Internal regulatory reviews have not led to meaningful reform, but how could they have? The hands-off approach that Congress has given agencies provides no incentives for self-control.

This is why Congress needs to continue its fight to take control back from agencies by passing meaningful legislation that will bring accountability to America's regulatory process. Millennials need a stronger voice in the regulation process, and their elected representatives can provide that check.

The continued growth in the cost and number of regulations must be slowed, outdated regulations need to be repealed, and the public should have a greater say in agencies'

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[52] Rep. Jason Smith, *H.R. 1155 – SCRUB Act of 2016*, 114th Congress, February 27, 2015.
[53] Office of Management and Budget, *Statement of Administration Policy, H.R. 1155- Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2015*, Executive Office of the President, January 5, 2016;
Office of Management and Budget, *Statement of Administration Policy H.R. 185 – Regulatory Accountability Act of 2015*, Executive Office of the President, January 12, 2015; and,
Office of Management and Budget, *Statement of Administration Policy H.R. 10 – Regulations from the Executive in Need of Scrutiny Act of 2011*, Executive Office of the President, December 6, 2011.

actions. Enacting the strongest parts of the regulatory reforms listed above would accomplish all of these goals.

Conclusion

Millennials desire to be entrepreneurs, but government regulation hinders the realization of their entrepreneurial dreams. The need for continually-increasing levels of regulation also fails to reflect the realities of a 21st century, consumer-centered economy.

Moving forward with regulatory reform, America's elected representatives need to reassert their rightful authority over executive and independent agencies. If nothing is done, agencies will continue to impose unnecessary roadblocks to achieving the millennial American Dream. Thankfully, many members of Congress realize this and have put forward promising proposals to follow.

Millennials value transparency, democracy, and accountability. It is long past time for Congress to apply these principles to U.S. regulation.

Mr. ISSA. Thank you. Dr. McLaughlin.

TESTIMONY OF PATRICK A. McLAUGHLIN, Ph.D., SENIOR RESEARCH FELLOW, MERCATUS CENTER AT GEORGE MASON UNIVERSITY

Mr. MCLAUGHLIN. Chairman Issa, Ranking Member Johnson, Members of the Committee, thank you for inviting me. My main point today is simple: regulations contribute to poverty. That may sound counterintuitive, perhaps because some people assume that the costs of regulations are limited to compliance costs, and that those costs are paid primarily by businesses. This belief is incorrect. There are at least two specific ways that the costs of regulation can actually be regressive, meaning that the costs are disproportionately borne by low-income households.

First, regulations have regressive effects by increasing the prices of basic necessities, such as electricity and housing, which typically are the big-ticket items on the budget of low-income households.

Second, some types of regulations are associated with higher levels of income inequality, because they make it too costly and too difficult for entrepreneurs from the lowest segments of the income distribution to start their own businesses.

On my first point, in contrast to the belief that businesses pay the cost of regulation, regulatory growth is in fact associated with increases in the prices of all goods for all consumers.

A recent study, which I have submitted for the record, found that a 10 percent increase in the quantity of Federal regulations is associated with a 0.7-perecent increase in prices. While 0.7 percent may sound small, consider that this same study found that regulations grew by 33.6 percent from 2000 to 2012. A simple linear calculation of the effect over time implies that 2.31 percent of price inflation was associated with Federal regulatory growth.

However, if you consider annual compounding, which would be appropriate given that this is a rate of growth, the total price inflation associated with regulation over that period is close to 9 percent; and I promise I will not mention annual compounding again. That percentage is the average across all households, but the price inflation associated with regulation is worse for low-income households because the big-ticket items in their budgets also happen to be heavily regulated. For example, electricity costs make up more than twice as much of the budgets of low-income households compared to high-income households. Because it is heavily regulated, the regulatory price inflation associated with the good is also relatively high.

My second point is that regulations can contribute to income inequality. In the study that I submitted for the record, a co-author and I examined a sample of 175 countries to learn more about the relationship between regulation and income inequality. We found that those countries with more stringent entry regulations tend to experience significantly higher levels of income inequality. The explanation for this is straightforward: when entrepreneurs cannot legally open a business because of the cost or difficulty of dealing with regulations, they may abandon the idea altogether.

Consider the longstanding reputation of America as the land of opportunity, where you can lift yourself up by your bootstraps with

enough hard work. Indeed, entrepreneurship has historically been one of the best paths from rags to riches. If regulations are inhibiting this process, people with low incomes have fewer opportunities to rise up the income distribution.

In sum, there is mounting evidence, mounting empirical evidence, that regulations are contributing to poverty. First, they have regressive effects caused by increasing prices, particularly for those items that low-income households purchase most.

Second, regulations can contribute to income inequality by increasing the cost of starting a business. This makes it more difficult for entrepreneurs to start their climb up the income ladder.

Although these facts are surely disheartening, there is good news. Because regulations disproportionately harm low-income households, regulatory reform offers an opportunity to enact a policy that would effectively act like a tax refund, because it would reduce the price inflation associated with regulations.

However, unlike a one-time tax refund, the benefits from regulatory reform would repeat year after year. They would not increase the deficit, and they would be progressive in their nature. That is, they would accrue foremost to low-income households. The regulatory process in the United States leads to regulatory accumulation, the buildup of rules over time.

Federal regulatory code currently contains over 1 million individual regulatory restrictions. If you actually tried to read regulations as a full-time job, it would take you over 3 years to read the entire code: over 3 years.

The accumulation of regulation is both undesirable because of the unintended consequences associated with it, and avoidable. If this accumulation of regulation is harming not only the economy but especially low-income households, it is certainly time to consider ways that we can eliminate regulations that are obsolete, duplicative, ineffective, or otherwise undesirable. We can and should change the regulatory process to reduce the ways that Federal regulations are hurting, not helping, low-income households. Thank you for your attention.

[The prepared statement of Mr. McLaughlin follows:**]

****Note:** Supplemental material submitted with this witness statement is not reprinted in this record but is on file with the Committee. The complete statement can be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104519.

TESTIMONY

REGULATIONS CONTRIBUTE TO POVERTY

PATRICK A. MCLAUGHLIN
Senior Research Fellow, Mercatus Center at George Mason University

House Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Hearing: Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages, and Startups

February 24, 2016

Chairman Marino, Ranking Member Johnson, and members of the committee: thank you for inviting me to testify today. As an economist and senior research fellow at the Mercatus Center at George Mason University, my primary research focuses on regulatory accumulation and the regulatory process, so it is my pleasure to testify on today's topic.

My testimony focuses on how our regulatory process, contrary to what many expect, contributes to poverty.

Some people maintain the notion that the costs of regulation are limited to compliance costs, and that these costs are paid primarily by businesses. This belief is incorrect. I will highlight two specific ways that the costs of regulation can actually be regressive, meaning that the costs are disproportionately borne by low-income households:

1. Regulations have regressive effects by increasing the prices of basic necessities, such as electricity, housing, and telephone services, which typically consume a larger share of the budget of lower-income households than of wealthier households.
2. Some types of regulations are associated with higher levels of income inequality, most likely because entrepreneurs at the lowest segments of the income distribution have relatively greater difficulty surmounting costly barriers to entry created by regulations.

With those points in mind, I hope to present this problem as an opportunity for policymakers to take positive steps toward regulatory reform—steps that will reduce the harm of federal regulations that are acting to impoverish, rather than help, low-income households.

For more information or to meet with the scholar, contact
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THE REGRESSIVE EFFECTS OF REGULATION

In contrast to the belief that businesses pay the costs of regulation, regulatory growth is in fact associated with increases in the prices of all goods to all consumers. While economists have long known that regulations increase prices, researchers have only recently been able to actually estimate the effect in a comprehensive manner. In a recent study, which I've attached, economists Dustin Chambers and Courtney Collins found that a 10 percent increase in the quantity of federal regulations is associated with an approximately 0.7 percent increase in prices.[1] While 0.7 percent may sound small, consider that this same study found that regulations affecting households grew by 33.6 percent between the years 2000 and 2012.[2] That implies that price inflation of 2.31 percent has been associated with federal regulatory growth over that time period.

That percentage is the average across all households. But the price inflation associated with regulation is worse for low-income households because those households spend more of their income on heavily regulated goods than high-income households. For the most part, these are basic necessities.[3] For example, electricity costs make up more than twice as much of the budgets of low-income households compared to high-income households, with the former spending just over 4 percent of their budgets on electricity, whereas high-income households spend less than 2 percent on it.[4] Similarly, telephone services take up about three times as much space in the budgets of poorer households (about 3.25 percent) relative to that of high-income households (1.1 percent). All of these goods, many of them essentials, are heavily regulated, so the price inflation associated with regulation is also relatively high.

Price volatility is a problem as well. The same study found that regulations are positively correlated with price volatility. Budget-constrained households need to plan future spending, and price volatility hurts them in that regard as well. Low-income households are not only more budget constrained, but they also spend about 15 percent more than high-income households on goods with the highest price volatility.[5] If regulations are contributing to that price volatility, then this is another way that they are contributing to poverty.

REGULATION AND INCOME INEQUALITY

Regulations can also contribute to income inequality. In a study that I have attached, a coauthor and I recently examined a sample of 175 countries to learn more about the relationship between regulation and income inequality. We found that those countries with more stringent entry regulations tend to experience significantly higher levels of income inequality.[6] The explanation for this is pretty straightforward: regulations can act as barriers to entry, and the higher those barriers to entry, the costlier it is for an entrepreneur to start a business. When entrepreneurs cannot legally open a business because of the cost of dealing with regulations, they may abandon the idea altogether.

Consider the long-standing reputation of America as the land of opportunity—where you can lift yourself up by your bootstraps with enough hard work. Indeed, entrepreneurship has historically been one of the best paths from rags to riches.[7] If regulations are inhibiting this process, that means people with low incomes have fewer opportunities to rise from the low end of the income distribution to middle and high levels. In fact, the possibility that regulations are hindering this process is consistent with the growing evidence that regulatory accumulation creates substantial drag on economic growth by impeding innovation and entrepreneurship, as I have previously testified before this subcommittee.[8]

1. Dustin Chambers and Courtney Collins, "How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, February 2016).
2. Author's calculation based on data in column 4 of table 4 of Chambers and Collins, "How Do Federal Regulations Affect Consumer Prices?" Total regulations in 2000 were 83,890, and by 2012 they had grown to 112,092—a difference of 28,202, or 33.6 percent.
3. Ibid., table 2, 25.
4. Ibid., table 2, 25.
5. Ibid., 20.
6. Patrick A. McLaughlin and Laura Stanley, "Regulation and Income Inequality: The Regressive Effects of Entry Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 2016).
7. Vincenzo Quadrini, "Entrepreneurship, Saving, and Social Mobility," *Review of Economic Dynamics* 3, no. 1, (2000): 1–40.
8. Patrick A. McLaughlin, "The Searching for and Cutting Regulations That Are Unnecessarily Burdensome Act of 2014" (Testimony

CONCLUDING REMARKS

In conclusion, I have just discussed how regulations are contributing to poverty. First, they have regressive effects caused by increasing prices, particularly for those items that low-income households purchase most. Second, regulations can contribute to income inequality by increasing the costs of starting a business. This makes it more difficult for entrepreneurs to start their own businesses and begin the climb up the income ladder.

Although these facts are surely disheartening, there is good news. Because regulations disproportionately harm low-income households, regulatory reform offers a feasible opportunity to enact a policy that would effectively act like a tax refund by virtue of reducing the price inflation associated with regulations. Additionally, regulatory reform could lead to gains in job growth, increased entrepreneurship, and greater innovation. However, unlike a one-time tax refund, the benefits from regulatory reform would repeat year after year, they would not increase the deficit, and they would be progressive in their nature—accruing foremost to low-income households.

The regulatory process in the United States leads to regulatory accumulation. Federal regulatory code currently contains over 1 million individual regulatory restrictions.[9] If you were insane enough to read regulations as a full-time job, it would take you over three years to read through the entire code.[10] The accumulation of regulation is both undesirable—because of a bevy of unintended consequences associated with it—and avoidable.[11] If this accumulation of regulation is harming not only the economy overall but especially low-income households, it is certainly time to consider ways that we can eliminate regulations that are obsolete, duplicative, ineffective, or otherwise undesirable.

before the House Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Mercatus Center at George Mason University, Arlington, VA, February 11, 2014).

9. Omar Al-Ubaydli and Patrick A. McLaughlin, "RegData: A Numerical Database on Industry-Specific Regulations for All United States Industries and Federal Regulations, 1997–2012," *Regulation & Governance* (December 2015).

10. Patrick A. McLaughlin, "The Code of Federal Regulations: The Ultimate Longread," Mercatus Center at George Mason University, April 1, 2015, http://mercatus.org/publication/code-federal-regulations-ultimate-longread-game-thrones-hunger-games.

11. For several of the unintended consequences of regulatory accumulation, see Patrick A. McLaughlin and Robert Greene, "The Unintended Consequences of Federal Regulatory Accumulation," Economic Perspectives, Mercatus Center at George Mason University, May 8, 2014, http://mercatus.org/publication/unintended-consequences-federal-regulatory-accumulation. McLaughlin and Williams, among others, offer suggestions on how such regulatory reform could be achieved. See Patrick A. McLaughlin and Richard Williams, "The Consequences of Regulatory Accumulation and a Proposed Solution" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, February 2014).

Mr. ISSA. Thank you. Mr. Weissman.

TESTIMONY OF ROBERT WEISSMAN, PRESIDENT, PUBLIC CITIZEN

Mr. WEISSMAN. Thank you, Mr. Chairman, Mr. Johnson, Members of the Committee. This hearing is constructed around looking at the costs of regulation, but it does not make sense to think only about the costs without looking at the benefits, without thinking about how it nets out for society.

You mentioned in your opening statement that it is important to take into account the impact of regulation on real, live people, and that is true, but we have to think about that for regulatory benefits as well. When we fail to protect the safety of our food, real people get sick and die. When we make our air clean, lives are saved: real, live people's lives are saved.

When we improve safety and health in our workplaces, it makes a difference for real, actual people. These are not hypothetical matters. They make a big difference, and the history of regulation in America is that it has conferred enormous benefits on our country.

It has actually conferred not just health, safety, and environmental benefits, but significant economic benefits. Now, I think there is a substantial literature of non-empirical and poorly constructed studies that suggest the contrary, but when you actually look at regulations that are adopted—in fact, look at the costs, look at the benefits, as OIRA does on an annual basis—the benefits exceed costs by between 2-to-1 or 15-to-1.

As an aside, the study that Mr. McLaughlin was just referring to relies on data from the World Bank. The long time lead to establish a business in the United States—four days in that study. Hard to see how that is a significant contributor to economic inequality.

Regulation, additionally, is not responsible in any scaled-up way for job loss. Before the Bureau of Labor Statistics stopped collecting data, very few employers reported that regulation was responsible for layoffs, as compared to general business demand. And if we pause for a moment and think about our recent history, and what is by far the greatest contributor to job loss, not just in the last 10 years but in the last 70 years, it was the Great Recession, due in substantial part, by almost any account, to regulatory failure: either too few regulations, too much deregulation, too little regulatory enforcement.

So, in fact, it is regulation; and it is lack of regulation and lack of regulatory enforcement that has been by far the greatest contributor to job loss, as well as, of course, disruption to families, households, and wages.

Moreover, there are substantial savings available, economic savings, that come from smart regulation. I list a number of examples in my testimony. Energy efficiency rules have saved consumers hundreds of billions of dollars. The introduction of generic competition for pharmaceuticals has saved more than $1.5 trillion, as compared to brand-name prices, over the last decade. The Administration's Clean Power Plan would save between $260 and $840 billion in net costs, and would actually reduce overall energy bills for households if it were to take place, if it is to be ultimately implemented.

A final point, as has been noted, this Committee and Washington has been engaged in a debate about regulatory policy for quite some time, and revisited many similar arguments, I think, over time. And it might be useful to move beyond the same back-and-forth debate, to have a more empirically-informed debate, but also to think about where there can be a meeting of minds.

And as regards the issue of startups and small business, it seems to me that there is a great opportunity to think about how regulation can promote competition and benefit small businesses.

For example, there is substantial evidence of manipulation in the energy markets, which directly impact the ability of small business to operate effectively. That would be an excellent area, in my view, for further Committee investigation and for congressional action. There is a substantial problem of patent trolls and the abuse of patent monopolies to undermine innovation in the IT sector. There are problems from too-big-to-fail and too-big-to-jail financial institutions not providing adequate credit to small businesses. That is an appropriate area for investigation and action by this Committee and by Congress.

Mr. Johnson has introduced legislation to address the problem of forced arbitration, which denies even small businesses the ability to bring antitrust claims against large corporations that are engaged in unfair and monopolistic practices against them. That, too, I think is an area where there should be action, where we can see where regulation will actually empower small business, increase market competition, and make our country stronger, safer, and more financially well-off.

[The prepared statement of Mr. Weissman follows:]

Written Testimony of

Robert Weissman
President, Public Citizen

before the

The House Judiciary Committee
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

on

"Triple Threat to Workers and Households:
Impacts of Federal Regulations on Jobs, Wages, and Startups"

February 24, 2016

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to testify today on regulatory policy issues. I am Robert Weissman, president of Public Citizen. Public Citizen is a national public interest organization with more than 400,000 members and supporters. For more than 40 years, we have advocated with some considerable success for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public Citizen chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 75 consumer, small business, labor, scientific, research, good government, faith, community, health and environmental organizations joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all. My testimony today, however, is solely on behalf of Public Citizen.

It is a mistake to view regulations as a "triple threat." As this testimony argues, regulations make our economy stronger and more stable, not weaker; create jobs and increase wages; and accommodate and benefit small business.

More generally, over the last century, and up to the present, regulations have made our country stronger, better, safer, cleaner, healthier and more fair and just. Regulations have made our food supply safer; saved hundreds of thousands of lives by reducing smoking rates; improved air quality, saving hundreds of thousands of lives; protected children's brain development by phasing out leaded gasoline; saved consumers billions by facilitating price-lowering generic competition for pharmaceuticals; reduced toxic emissions into the air and water; empowered disabled persons by giving them improved access to public facilities and workplace opportunities; guaranteed a minimum wage, ended child labor and established limits on the length of the work week; saved the lives of thousands of workers every year; protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques; ensured financial system stability (at least when appropriate rules were in place and enforced); made toys safer; saved tens of thousands of lives by making our cars safer; and much, much more.

The benefits of rules adopted during the Obama administration, as with rules adopted during the Bush administration, vastly exceed the costs, even when measured according to corporate-friendly criteria.

We have also seen in recent years with great clarity the impact of regulatory failure—lack of regulatory enforcement, regulations delayed or rolled back, and insufficient regulatory standards and protections in place. Most notably, regulatory failure was significantly responsible for the Great Recession, which imposed far greater costs on the economy and cost far more jobs than regulations ever could.

The first section of this testimony provides a quick overview of how regulations strengthen America, including with a case study of the Occupational Safety and Health Administration's

new silica rule. The second section explains that regulations are economically smart, by examining relevant aggregate data. It also debunks empirically starved and groundless claims about enormous regulatory cost, and recounts the history of regulated industry's Chicken Little claims about the devastating impact of proposed rules. The third section offers case studies to show that regulations are economically smart. It reviews how regulatory failure led to the Great Recession with its horrific human and economic toll; examines numerous regulations offering dramatic cost savings to consumers, including for energy efficiency, generic drugs and the proposed Clean Power plan; and explains how regulations can boost wages, by example through the Department of Labor's proposed overtime rule. The fourth section explores a number of areas where new regulatory initiatives could benefit small business and start-ups, by addressing anti-competitive market practices. The final section briefly concludes with a call for a new turn in the regulatory policy debate.

I. Regulations Strengthen America

This hearing is unfortunately framed around the purported economic harms of regulation. It makes little sense to consider costs of regulation, however, without recognizing regulatory benefits.

Our country has made dramatic gains through regulation, making the country safer, healthier, more just, cleaner, more equitable and more financially secure. Regulation has made all of our lives better. It has:

- Made our food safer.[1]
- Saved tens of thousands of lives by making our cars safer. NHTSA's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicles traveled in 1980 to 1.41 fatalities per 100 million vehicles traveled in 2006. [2]
- Made it safer to breathe, saving hundreds of thousands of lives annually. Clean Air Act rules saved 164,300 adult lives in 2010. In February 2011, EPA estimated that by 2020 they will save 237,000 lives annually. EPA air pollution controls saved 13 million days of lost work and 3.2 million days of lost school in 2010, and EPA estimates that they will save 17 million work-loss days and 5.4 million school-loss days annually by 2020. [3]
- Protected children's brain development by phasing out leaded gasoline. EPA regulations phasing out lead in gasoline helped reduce the average blood lead level in U.S. children ages 1 to 5. During the years 1976 to 1980, 88 percent of all U.S. children had blood

[1] In addition to the historic advances through food safety regulation, implementation of the 2011 Food Safety Modernization Act will have tremendous benefits, eliminating most of the annual toll of 48 million illnesses, 128,000 hospitalizations, and 3,000 deaths that the Centers for Disease Control and Prevention estimates occur each year from contaminated food. Taylor, M. (February 5, 2014). *Implementing the FDA Food Safety Modernization Act*, available at: http://www.fda.gov/NewsEvents/Testimony/ucm384687.htm.
[2] Steinzor, R., & Shapiro, S. (2010). *The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment*: University of Chicago Press.
[3] *See* U.S. Environmental Protection Agency, Office of Air and Radiation. (2011, March). *The Benefits and Costs of the Clean Air and Radiation Act from 1990 to 2020*. Available at: http://www.epa.gov/oar/sect812/feb11/fullreport.pdf..

levels in excess of 10 micrograms/deciliter; during the years 1991 to 1994, only 4.4 percent of all U.S. children had blood levels in excess of that dangerous amount. [4]

- Empowered disabled persons by giving them improved access to public facilities and workplace opportunities, through implementation of the Americans with Disabilities Act.[5]
- Guaranteed a minimum wage, ended child labor and established limits on the length of the work week.[6]
- Saved the lives of thousands of workers every year. Deaths on the job have declined from more than 14,000 per year in 1970, when the Occupational Safety and Health Administration was created to under 4,500 at present. [7]
- Protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques.[8]
- For half a century in the mid-twentieth century, and until the onset of financial deregulation, provided financial stability and a right-sized financial sector, helping create the conditions for robust economic growth and shared prosperity.[9]

These are not just the achievements of a bygone era. Regulation continues to improve the quality of life for every American, every day. Ongoing and emerging problems and a rapidly changing economy require the issuance of new rules to ensure that America is strong and safe, healthy and wealthy.

Consider just one such rule: the Occupational Safety and Health Administration's proposed life-saving silica dust standard. Regulated industry has harshly complained about this rule, and succeeded in delaying it for more than a decade; and it may well be criticized at this hearing. When finally adopted, however, the rule will annually save hundreds of lives and billions in net costs.

After more than a dozen years of delay, OSHA's life-saving silica dust standard is finally set to take effect this year. More than two million workers in the United States are exposed to silica

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[4] Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities*. Available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf.

[5] National Council on Disability. (2007). *The Impact of the Americans with Disabilities Act*. Available at: http://www.ncd.gov/publications/2007/07262007.

[6] There are important exceptions to the child labor prohibition; significant enforcement failures regarding the minimum wage, child labor and length of work week (before time and a half compensation is mandated). But the quality of improvement in American lives has nonetheless been dramatic. Lardner, J. (2011). *Good Rules: 10 Stories of Successful Regulation*. Demos. Available at: http://www.demos.org/sites/default/files/publications/goodrules_1_11.pdf.

[7] *See* AFL-CIO. (2015, April.) *Death on the Job: The Toll of Neglect*, p. 1. Available at: http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalnobug.pdf. Mining deaths fell by half shortly after creation of the Mine Safety and Health Administration. Weeks, J. L., & Fox, M. (1983). Fatality rates and regulatory policies in bituminous coal mining. United States, 1959-1981. *American journal of public health, 73*(11), 1278.

[8] See 16 CFR 410-460.

[9] See Stiglitz, J. E. (2010). *Freefall: America, free markets, and the sinking of the world economy*: WW Norton & Co Inc.; Kuttner, R. (2008). *The Squandering of America: how the failure of our politics undermines our prosperity*: Vintage.

dust, especially construction workers and others who operate jackhammers, cut bricks or use sandblasters. Inhaling the dust causes a variety of harmful effects, including lung cancer, tuberculosis, and silicosis (a potentially fatal respiratory disease). The rule will reduce the permissible exposure limit for silica to 50 micrograms per cubic meter (from the currently allowed 100) over an 8-hour workday. "OSHA estimates that the proposed rule would prevent between 579 and 796 fatalities annually—375 from non-malignant respiratory disease, 151 from end-stage renal disease, and between 53 and 271 from lung cancer—and an additional 1,585 cases of moderate-to-severe silicosis annually."[10]

The new standard requires employers to measure exposures, conduct medical exams for workers with high exposures and train workers about the hazards of silica. It requires effective measures to reduce silica exposure, which "can generally be accomplished by using common dust control methods, such as wetting down work operations to keep silica-containing dust from getting into the air, enclosing an operation ('process isolation'), or using a vacuum to collect dust at the point where it is created before workers can inhale it,"[11] while giving businesses flexibility in choosing appropriate control methods.

OSHA has long acknowledged that its current silica dust standard, adopted in 1971, is obsolete.[12] The first concrete action it took to update the standard was in October 2003, when it convened a small business panel to review its proposed rule. In 2011, OSHA submitted to Office of Information and Regulatory Affairs (OIRA) a draft proposed rule to reduce exposure to deadly silica dust. Although OIRA is supposed to complete reviews in three months, it took years for OIRA to complete the review. No explanation for this delay ever emerged. After OIRA finally released the rule, the rule remained stuck at OSHA. This inexcusable delay translates into the needless deaths of roughly 12,000 people.

Silica-related disease is not evenly distributed across the U.S. population. As a result, the benefits of the new rule most strongly will be felt among working class communities and communities of color. In Michigan, studies show the incidence of silicosis in African Americans is almost 6 times greater than that of Caucasians.[13] Latino workers now constitute 24 percent of the workforce in foundries, and almost 26 percent of the workforce in construction, are especially at risk for working jobs where silica dust exposure is paired with a lack of protection.

Industry has vociferously opposed the new silica standard, but costs to the average workplace will be modest: about $1,200 for the average workplace and $550 for businesses with fewer than 20 employees. There is no question that the new standard is feasible: Japan and some Canadian provinces have exposure limits half the level of the new OSHA standard.

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[10] OSHA. (2013). *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis: Supporting document for the Notice of Proposed Rulemaking for Occupational Exposure to Crystalline Silica*. Available at: https://www.osha.gov/silica/Silica_PEA.pdf.

[11] OSHA. OSHA's Proposed Crystalline Silica Rule: Overview, available at: https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html.

[12] OSHA *Occupational Exposure to Crystalline Silica*. 75 Fed. Reg. 79.603 (2010, Dec. 20).

[13] Rosenman, K. and Reilly, M.J. (2014, July 1). 2012 *Annual Report Tracking Silicosis and Other Work-Related Lung Diseases in Michigan*, Michigan State University, available at: http://www.oem.msu.edu/userfiles/file/Annual%20Reports/Silica/2012Silicosis_OccLungDiseaseAnnRpt.pdf.

OSHA estimates the rule will provide average net benefits of about $2.8 to $4.7 billion annually over the next 60 years (benefits calculated by assigning a dollar value to each anticipated life saved and illness avoided).

II. Regulations are Economically Smart: Aggregate Data

Although most regulations do not have economic objectives as their primary purpose, in fact regulation is overwhelmingly positive for the economy.

While regulators commonly do not have economic growth and job creation as a mission priority, they are mindful of regulatory cost, and by statutory directive or on their own initiative typically seek to minimize costs; relatedly, the rulemaking process gives affected industries ample opportunity to communicate with regulators over cost concerns, and these concerns are taken into account. To review the regulations actually proposed and adopted is to see how much attention regulators pay to reducing cost and detrimental impact on employment. And to assess the very extended rulemaking process is to see how substantial industry influence is over the rules ultimately adopted—or discarded.

There is a large body of theoretical and non-empirical work on the cost of regulation, some of which yields utterly implausible cost estimates. Most prominent in this regard is the report issued by Nicole Crain and W. Mark Crain, consultants to the Small Business Administration Office of Advocacy.[14] This study is thoroughly discredited, but the study's groundless conclusions (that regulation costs the U.S. economy $1.75 trillion annually, or more than $10,000 per small business employee) continues to be cited too frequently in policy debates, often without attribution to the original, discredited study. Crain and Crain attribute $1.236 trillion in costs to "economic regulation." This concept as employed by Crain and Crain includes a range of elements that might properly be considered regulation, but which are not typically part of the regulatory policy debate. This includes matters such as tariffs, antitrust policy, complexity of the tax system, and ease of starting a new business,[15] a figure that is entirely derived from a regression analysis correlating ratings on a World Bank "regulatory quality index" — which is itself based on nothing more than survey data from businesses and other sources — and national GDP per capita. It is remarkable enough to imagine that such a cross-cultural, international regression analysis would yield such a robust result that it should meaningfully inform U.S. policy; even more so, when it yields a total cost vastly out of line with other careful analysis, as well as such unlikely findings as a correlation between increased education and reduced economic growth. It turns out, as the Economic Policy Institute has shown, that with a more complete set of data than used by Crain and Crain — but still using the same regression equations — no statistical relationship between "regulatory quality" and GDP exists.[16] Crain and Crain also include a cost for tax compliance — not typically considered a "regulatory" cost — which they pin at roughly $160 billion. A number of other fatal flaws bedevil the discredited

[14] Crain, N. V., & Crain, W. M. (2010). *The Impact of Regulatory Costs on Small Firms. Prepared for Small Business Administration*, Office of Advocacy. Available at: http://archive.sba.gov/advo/research/rs371tot.pdf.
[15] Crain and Crain.
[16] Irons, J., & Green, A. (2011, 19 July). *Flaws Call For Rejecting Crain and Crain Model*. Economic Policy Institute. Retrieved 24 February, 2012, from http://www.epi.org/page/-/EPI_IssueBrief308.pdf.

study.[17] The Crain and Crain study is characteristic of other poorly constructed anti-regulatory studies, which purport to tally costs of regulation but ignore benefits.

There is also a long history of business complaining about the cost of regulation—and predicting that the next regulation will impose unbearable burdens.

- Bankers and business leaders described the New Deal financial regulatory reforms in foreboding language, warning that the Federal Deposit Insurance Commission and related agencies constituted "monstrous systems," that registration of publicly traded securities constituted an "impossible degree of regulation," and that the New Deal reforms would "cripple" the economy and set the country on a course toward socialism.[18] In fact, those New Deal reforms prevented a major financial crisis for more than half a century — until they were progressively scaled back.
- Chemical industry leaders said that rules requiring removal of lead from gasoline would "threaten the jobs of 14 million Americans directly dependent and the 29 million Americans indirectly dependent on the petrochemical industry for employment." In fact, while banning lead from gasoline is one of the single greatest public policy public health accomplishments, the petrochemical industry has continued to thrive. The World Bank finds that removing lead from gasoline has a ten times economic payback.[19]
- Big Tobacco long convinced restaurants, bars and small business owners that smokefree rules would dramatically diminish their revenue — by as much as 30 percent, according to industry-sponsored surveys. The genuine opposition from small business owners — based on the manipulations of Big Tobacco — delayed the implementation of smokefree rules and cost countless lives. Eventually, the Big Tobacco-generated opposition was overcome, and smokefree rules have spread throughout the country — significantly lowering tobacco consumption. Dozens of studies have found that smokefree rules have had a positive or neutral economic impact on restaurants, bars and small business.[20]
- Rules to confront acid rain have reduced the stress on our rivers, streams and lakes, fish and forests.[21] Industry projected costs of complying with acid rain rules of $5.5 billion initially, rising to $7.1 billion in 2000; ex-ante estimates place costs at $1.1 billion - $1.8 billion.[22]

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[17] Eisenbrey, R., & Shapiro, I. (2011, August). *Deconstructing Crain and Crain*. Economic Policy Institute. Retrieved 24 February, 2012, from http://web.epi-data.org/temp727/IssueBrief312-2.pdf.; Irons, J. and Green, A., *Flaws Call for Rejecting Crain and Crain Model*.; Shapiro, S. A., & Ruttenberg, R. (2011, February). *The Crain and Crain Report on Regulatory Costs*. Center for Progressive Reform. Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf; Copeland, C. W. (2011, April 6). *Analysis of an Estimate of the Total Costs of Federal Regulations*. Congressional Research Service. Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf.

[18] Lincoln, T. (2011). *Industry Repeats Itself: The Financial Reform Fight*. Public Citizen. Available at: http://www.citizen.org/documents/Industry-Repeats-Itself.pdf.

[19] Crowther, A. (2013). *Regulation Issue: Industry's Complaints About New Rules Are Predictable — and Wrong*. p.8. Available at: http://www.citizen.org/documents/regulation-issue-industry-complaints-report.pdf.

[20] *Regulation Issue: Industry's Complaints About New Rules Are Predictable — and Wrong*. p.10.

[21] Environmental Protection Agency. *Acid Rain in New England: Trends*. Available at: http://www.epa.gov/region1/eco/acidrain/trends.html.

[22] The Pew Environment Group. (2010, October). *Industry Opposition to Government Regulation*. Available at: http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact_Sheet/Industry%20Clean%20Energy%20Factsheet.pdf.

- In the case of the regulation of carcinogenic benzene emissions, "control costs were estimated at $350,000 per plant by the chemical industry, but soon thereafter the plants developed a new process in which more benign chemicals could be substituted for benzene, thereby reducing control costs to essentially zero."[23]
- The auto industry long resisted rules requiring the installation of air bags, publicly claiming that costs would be more than $1000-plus for each car. Internal cost estimates actually showed the projected cost would be $206.[24] The cost has now dropped significantly below that. The National Highway Traffic Safety Administration estimates that air bags saved 2,300 lives in 2010, and more than 30,000 lives from 1987 to 2010.[25]

There is a long list of other examples from the last century — including child labor prohibitions, the Family Medical Leave Act, the CFC phase out, asbestos rules, coke oven emissions, cotton dust controls, strip mining, vinyl chloride[26] — that teach us to be wary of Chicken Little warnings about the costs of the next regulation.

The important lessons here are that impacted industries have a natural bias to overestimate costs of regulatory compliance, and projections of cost regularly discount the impact of technological dynamism. Indeed, regulation spurs innovation and can help create efficiencies and industrial development wholly ancillary to its directly intended purpose.

In trying to get a handle on actual costs and benefits of regulation, much more informative than the theoretical work, anecdotes and allegations is a review of the actual costs and benefits of regulations — though even this methodology is significantly imprecise and heavily biased against the benefits of regulation. Every year, the Office of Management and Budget analyzes the costs and benefits of rules with significant economic impact. The benefits massively exceed costs.

The principle finding of *OMB's draft 2015 Report to Congress on the Benefits and Costs of Federal Regulation* is:

> The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2004, to September 30, 2014, for which agencies estimated and monetized both benefits and costs, are in the aggregate between $216 billion and $812 billion, while the estimated annual costs are in the aggregate between $57 billion and $85 billion. These

[23] Shapiro, I., & Irons, J. (2011). *Regulation, Employment, and the Economy: Fears of job loss are overblown*. Economic Policy Institute. Available at: http://www.epi.org/files/2011/BriefingPaper305.pdf.
[24] Behr, P. (August 13, 1981). U.S. Memo on Air Bags in Dispute. Washington Post.
[25] National Highway Traffic Safety Administration. (2012). *Traffic Safety Facts: Occupant Protection*. Available at: http://www-nrd.nhtsa.dot.gov/Pubs/811619.pdf.
[26] *Regulation Issue: Industry's Complaints About New Rules Are Predictable and Wrong*; Hodges, H. (1997). Falling Prices: Cost of Complying With Environmental Regulations Almost Always Less Than Advertised. Economic Policy Institute. Available at: http://www.epi.org/publication/bp69 ; Shapiro, I., & Irons, J. (2011). *Regulation, Employment, and the Economy: Fears of job loss are overblown*. Economic Policy Institute. Available at: http://www.epi.org/files/2011/BriefingPaper305.pdf.

> ranges are reported in 2001 dollars and reflect uncertainty in the benefits and costs of each rule at the time that it was evaluated.[27]

In other words, even by OMB's most conservative accounting, the benefits of major regulations over the last decade exceeded costs by a factor of more than two-to-one. And benefits may exceed costs by a factor of 15.

These results are consistent year-to-year as the following table shows.

Total Annual Benefits and Costs of Major Rules by Fiscal Year (billions of 2001 dollars)[28]

Fiscal Year	Number of Rules	Benefits	Costs
2001	12	22.5 to 27.8	9.9
2002	2	1.5 to 6.4	0.6 to 2.2
2003	6	1.6 to 4.5	1.9 to 2.0
2004	10	8.8 to 69.8	3.0 to 3.2
2005	12	27.9 to 178.1	4.3 to 6.2
2006	7	2.5 to 5.0	1.1 to 1.4
2007	12	28.6 to 184.2	9.4 to 10.7
2008	11	8.6 to 39.4	7.9 to 9.2
2009	15	8.6 to 28.9	3.7 to 9.5
2010	18	18.6 to 85.9	6.4 to 12.4
2011	13	34.3 to 98.5	5.0 to 10.2
2012	14	53.2 to 114.6	14.8 to 19.5
2013	7	25.6 to 67.3	2.0 to 2.5
2014	13	8.1 to 18.9	2.5 to 3.7

The reason for the consistency is that regulators pay a great deal of concern to comparative costs and benefits (even though there is, we believe, a built-in bias of formal cost-benefit analysis against regulatory initiative[29]). Very few major rules are adopted where projected costs exceed projected benefits, and those very few cases typically involve direct Congressional mandates.

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[27] Office of Management and Budget, Office of Information and Regulatory Affairs. (2015). Draft *2015 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities*. pp.1-2. Available at: https://www.whitehouse.gov/sites/default/files/omb/inforeg/2015_cb/draft_2015_cost_benefit_report.pdf.

[28] Office of Management and Budget, Office of Information and Regulatory Affairs. (2015). *Draft 2015 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities, Table 1-4*, pp. 20-21. Available at: https://www.whitehouse.gov/sites/default/files/omb/inforeg/2015_cb/draft_2015_cost_benefit_report.pdf.. ; 2001-2004 data from: Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities, Table 1-3*, p. 19-20. Available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf.

[29] *See, e.g.*, Shapiro, S. et al., *CPR Comments on Draft 2010 Report to Congress on the Benefits and Costs of Federal Regulations* 16-19 (App. A, Pt. C.) (2010), Available at: http://www.progressivereform.org/articles/2010_CPR_Comments_OMB_Report.pdf ; Steinzor, R. et al., *CPR*

It should also be noted that relatively high regulatory compliance costs do not necessarily have negative job impacts; firm expenditures on regulatory compliance typically create new jobs within affected firms or other service or product companies with which they contract.

Moreover, the empirical evidence also fails to support claims that regulation causes significant job loss. Insufficient demand is the primary reason for layoffs. In extensive survey data collected by the Bureau of Labor Statistics, employers cite lack of demand roughly 100 times more frequently than government regulation as the reason for mass layoffs![30] (Unfortunately, in response to budget cuts, the BLS ceased producing its mass layoff report in 2013.)

Reason for layoff: 2008-2012[31]

	2008	**2009**	**2010**	**2011**	**2012**
Business Demand	516,919	824,834	384,564	366,629	461,328
Governmental regulations/intervention	5,505	4,854	2,971	2,736	3,300

It is also the case that firms typically innovate creatively and quickly to meet new regulatory requirements, even when they fought hard against adoption of the rules.[32] The result is that costs are commonly lower than anticipated.

III. Regulations Are Economically Smart: Case Studies

A. Job-destroying regulatory failure and the Great Recession

Missing from much of the current policy debate on jobs and regulation is a crucial, overriding fact: The Great Recession and ongoing weakness in the jobs market and national economy are a direct result of too little regulation and too little regulatory enforcement. The costs of this set of regulatory failures are staggeringly high, and far outdistance any plausible story about the "cost" of regulation.

Comments on Draft 2009 Report to Congress on the Benefits and Costs of Federal Regulations 16-19 (App. A, Pt. C.) (2009). Available at: http://www.progressivereform.org/articles/2009_CPR_Comments_OMB_Report.pdf.

[30] U.S. Department of Labor, Bureau of Labor Statistics. (2012, November). *Extended Mass Layoffs in 2011. Table 5. Reason for layoff: extended mass layoff events, separations, and initial claimants for unemployment insurance, private nonfarm sector, 2009-2011.* Available at: http://www.bls.gov/mls/mlsreport1039.pdf.

[31] U.S. Department of Labor, Bureau of Labor Statistics. (2012, November). *Extended Mass Layoffs in 2011. Table 5. Reason for layoff: extended mass layoff events, separations, and initial claimants for unemployment insurance, private nonfarm sector, 2010-2012.* Available at: http://www.bls.gov/mls/mlsreport1043.pdf. U.S. Department of Labor, Bureau of Labor Statistics. (2013, September). *Extended Mass Layoffs in 2011. Table 4. Reason for layoff: extended mass layoff events, separations, and initial claimants for unemployment insurance, private nonfarm sector, 2009-2011.* Available at: http://www.bls.gov/mls/mlsreport1039.pdf ; U.S. Department of Labor, Bureau of Labor Statistics. (2011, November). *Extended Mass Layoffs in 2010. Table 6. Reason for layoff: extended mass layoff events, separations, and initial claimants for unemployment insurance, private nonfarm sector, 2008-2010.* Available at: http://www.bls.gov/mls/mlsreport1038.pdf.

[32] Mouzoon, N., & Lincoln, T. (2011). *Regulation: The Unsung Hero in American Innovation*. Public Citizen. Available at: http://www.citizen.org/documents/regulation-innovation.pdf.

A very considerable literature, and a very extensive Congressional hearing record, documents in granular detail the ways in which regulatory failure led to financial crash and the onset of the Great Recession. "Widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets," concluded the Financial Crisis Inquiry Commission.[33] "Deregulation went beyond dismantling regulations," notes the Financial Crisis Inquiry Commission. "[I]ts supporters were also disinclined to adopt new regulations or challenge industry on the risks of innovations."[34]

The regulatory failures were pervasive, the Financial Crisis Inquiry Commission concluded:

> The sentries were not at their posts, in no small part due to the widely accepted faith in the self-correcting nature of the markets and the ability of financial institutions to effectively police themselves. More than 30 years of deregulation and reliance on self-regulation by financial institutions, championed by former Federal Reserve Chairman Alan Greenspan and others, supported by successive administrations and Congresses, and actively pushed by the powerful financial industry at every turn, had stripped away key safeguards, which could have helped avoid catastrophe. This approach had opened up gaps in oversight of critical areas with trillions of dollars at risk, such as the shadow banking system and over-the-counter derivatives markets. In addition, the government permitted financial firms to pick their preferred regulators in what became a race to the weakest supervisor.

A sampling of the very extensive regulatory failures that contributed to the crisis include:

> **Failure to stop toxic and predatory mortgage lending that blew up the housing bubble.** Concludes the Financial Crisis Inquiry Commission: "The prime example is the Federal Reserve's pivotal failure to stem the flow of toxic mortgages, which it could have done by setting prudent mortgage-lending standards. The Federal Reserve was the one entity empowered to do so and it did not."[35] Regulators failed almost completely to use then-existing authority to crack down on abusive lending practices. The Federal Reserve took three formal actions against subprime lenders from 2002 to 2007.[36] The Office of Comptroller of the Currency, with authority over almost 1,800 banks, took three consumer-protection enforcement actions from 2004 to 2006.[37]
>
> **Repeal of the Glass-Steagall Act.** The Financial Services Modernization Act of 1999

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[33] Financial Crisis Inquiry Commission. (2011). *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States.* Washington, D.C.: Government Printing Office. p. 30.
[34] *The Financial Crisis Inquiry Report.* p. 53.
[35] *The Financial Crisis Inquiry Report.* p. xvii.
[36] Tyson, J., Torres, C., & Vekshin, A. (2007, March 22). *Fed Says It Could Have Acted Sooner on Subprime Rout.* Bloomberg. Available at: http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1.KbcMbvIiA&refer=home.
[37] Torres, C., & Vekshin, A. (2007, March 14). *Fed, OCC Publicly Chastised Few Lenders During boom.* Bloomberg. Available at: http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a6WTZifUUH7g&refer=us.

formally repealed the Glass-Steagall Act of 1933 (also known as the Banking Act of 1933) and related laws, which prohibited commercial banks from offering investment banking and insurance services. The 1999 repeal of Glass-Steagall helped create the conditions in which banks created and invested in creative financial instruments such as mortgage-backed securities and credit default swaps, investment gambles that rocked the financial markets in 2008. More generally, the Depression-era conflicts and consequences that Glass-Steagall was intended to prevent re-emerged once the Act was repealed. The once staid commercial banking sector quickly evolved to emulate the risk-taking attitude and practices of investment banks, with disastrous results. "The most important consequence of the repeal of Glass-Steagall was indirect—it lay in the way repeal changed an entire culture," notes economist Joseph Stiglitz. "When repeal of Glass-Steagall brought investment and commercial banks together, the investment-bank culture came out on top. There was a demand for the kind of high returns that could be obtained only through high leverage and big risk taking."[38]

Unregulated Financial Derivatives. The 2008 crash proved Warren Buffet's warning that financial derivatives represent "weapons of mass financial destruction" to be prescient.[39] Financial derivatives amplified the financial crisis far beyond the troubles connected to the popping of the housing bubble. AIG made aggressive bets on credit default swaps (CDSs) that went bad with the housing bust, and led to a taxpayer-financed rescue of more than $130 billion. AIG was able to put itself at such risk because its CDS business was effectively subject to no governmental regulation or even oversight. That was because first, high officials in the Clinton administration and the Federal Reserve, including SEC Chair Arthur Levitt, Treasury Secretary Robert Rubin, Deputy Treasury Secretary Lawrence Summers and Federal Reserve Chair Alan Greenspan, blocked the Commodity Futures Trading Commission (CFTC) from regulating financial derivatives;[40] and second, because Congress and President Clinton codified regulatory inaction with passage of the Commodity Futures Modernization Act, which enacted a statutory prohibition on CFTC regulation of financial derivatives.

The SEC's Voluntary Regulation Regime for Investment Banks. In 1975, the SEC's trading and markets division promulgated a rule requiring investment banks to maintain a debt-to-net capital ratio of less than 12 to 1. It forbade trading in securities if the ratio reached or exceeded 12 to 1, so most companies maintained a ratio far below it. In 2004, however, the SEC succumbed to a push from the big investment banks—led by Goldman

[38] Stiglitz, J. (2009). Capitalist fools. *Vanity Fair, 51*(1).

[39] Buffett, W. (2003). *Report to Shareholders, February 21, 2003*. Berkshire Hathaway. Available at: http://www.berkshirehathaway.com/letters/2002pdf.pdf.

[40] After the collapse of Long-Term Capital Management, Born issued a new call to regulate financial derivatives. "This episode should serve as a wake-up call about the unknown risks that the over-the-counter derivatives market may pose to the U.S. economy and to financial stability around the world." Born told the House Banking Committee two days later. "It has highlighted an immediate and pressing need to address whether there are unacceptable regulatory gaps relating to hedge funds and other large OTC derivatives market participants." But what should have been a moment of vindication for Born was swept aside by her adversaries, and Congress enacted a six-month moratorium on any CFTC action regarding derivatives or the swaps market. In May 1999, Born resigned in frustration. Born, B. (1998). *Testimony of Brooksley Born, Chairperson, Commodity Futures Trading Commission Concerning Long-Term Capital Management Before the U.S. House of Representatives Committee on Banking and Financial Services.* Available at: http://www.cftc.gov/opa/speeches/opaborn-35.htm.

Sachs, and its then-chair, Henry Paulson—and authorized investment banks to develop their own net capital requirements in accordance with standards published by the Basel Committee on Banking Supervision. This essentially involved complicated mathematical formulas that imposed no real limits, and was voluntarily administered. With this new freedom, investment banks pushed borrowing ratios to as high as 40 to 1, as in the case of Merrill Lynch. This super-leverage not only made the investment banks more vulnerable when the housing bubble popped, it enabled the banks to create a more tangled mess of derivative investments—so that their individual failures, or the potential of failure, became systemic crises. On September 26, 2008, as the crisis became a financial meltdown of epic proportions, SEC Chair Christopher Cox, who spent his entire public career as a deregulator, conceded "the last six months have made it abundantly clear that voluntary regulation does not work."[41]

Poorly Regulated Credit Ratings Firms. The credit rating firms enabled pension funds and other institutional investors to enter the securitized asset game, by attaching high ratings to securities that actually were high risk—as subsequent events revealed. The credit ratings firms have a bias toward offering favorable ratings to new instruments because of their complex relationships with issuers,[42] and their desire to maintain and obtain other business dealings with issuers. This institutional failure and conflict of interest might and should have been forestalled by the SEC, but the Credit Rating Agencies Reform Act of 2006 gave the SEC insufficient oversight authority. In fact, under the Act, the SEC was required to give an approval rating to credit ratings agencies if they adhered to their own standards—even if the SEC knew those standards to be flawed.

The regulatory failure story can perhaps be summarized as follows: Financial deregulation and non-regulation created a vicious cycle that helped inflate the housing bubble and an interconnected financial bubble. Weak mortgage regulation enabled the spread of toxic and predatory mortgages that helped fuel the housing bubble. Deregulated Wall Street firms and big

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[41] Faoila, A., Nakashima, E., & Drew, J. (2008, October 15). *What Went Wrong*. The Washington Post. Available at: www.washingtonpost.com/wp-dyn/content/story/2008/10/14/ST2008101403344.html.

[42] The CEO of Moody's reported in a confidential presentation that his company is "continually 'pitched' by bankers" for the purpose of receiving high credit ratings and that sometimes "we 'drink the Kool-Aid.'" A former managing director of credit policy at Moody's testified before Congress that, "Originators of structured securities [e.g., banks] typically chose the agency with the lowest standards," allowing banks to engage in "rating shopping" until a desired credit rating was achieved. The agencies made millions on mortgage-backed securities ratings and, as one member of Congress said, "sold their independence to the highest bidder." Banks paid large sums to the ratings companies for advice on how to achieve the maximum, highest quality rating. "Let's hope we are all wealthy and retired by the time this house of cards falters," a Standard & Poor's employee candidly revealed in an internal email obtained by congressional investigators.

Other evidence shows that the firms adjusted ratings out of fear of losing customers. For example, an internal email between senior business managers at one of the three ratings companies calls for a "meeting" to "discuss adjusting criteria for rating CDOs [collateralized debt obligations] of real estate assets this week because of the ongoing threat of losing deals." In another email, following a discussion of a competitor's share of the ratings market, an employee of the same firm states that aspects of the firm's ratings methodology would have to be revisited in order to recapture market share from the competing firm.

See Weissman, R., & Donahue, J. (2009, March). *Sold Out: How Wall Street and Washington Betrayed America*. Essential Information and Consumer Education Foundation. Available at: http://wallstreetwatch.org/reports/sold_out.pdf.

banks exhibited an insatiable appetite for mortgage loans, irrespective of quality, thanks to insufficiently regulated securitization, off-the-books accounting, the spread of shadow banking techniques, dangerous compensation incentives and inadequate capital standards. Reckless financial practices were ratified by credit ratings firms, paving the way for institutional funders to pour billions into mortgage-related markets; and an unregulated derivatives trade offered the illusion of systemic insurance but actually exacerbated the crisis when the housing bubble popped and Wall Street crashed.

The regulatory failure-enabled Great Recession cost the U.S. economy a staggering amount, on the order of $20 trillion.

To prevent the collapse of the financial system, the federal government provided incomprehensibly huge financial supports, far beyond the $700 billion in the much-maligned Troubled Assets Relief Program (TARP). The Special Inspector General for the Troubled Assets Relief Program (SIGTARP) estimated that "though a huge sum in its own right, the $700 billion in TARP funding represents only a portion of a much larger sum—estimated to be as large as $23.7 trillion—of potential Federal Government support to the financial system."[43] Much of this sum was never allocated, and most of the TARP funds were paid back. However, the regulatory reform policy debate should acknowledge that such unfathomable sums were put at risk thanks to regulatory failure.

Even more significant, however, are the actual losses traceable to the regulatory failure-enabled Great Recession. These losses are real, not potential; they are at a comparable scale of more than $20 trillion; they involve an actual loss of economic output, not just a reallocation of resources; and they have imposed devastating pain on families, communities and national well-being.

A GAO study found that "[t]he 2007-2009 financial crisis, like past financial crises, was associated with not only a steep decline in output but also the most severe economic downturn since the Great Depression of the 1930s."[44] Reviewing estimates of lost economic output, GAO reported that the present value of cumulative output losses could exceed $13 trillion.[45] Additionally, GAO found that "households collectively lost about $9.1 trillion (in constant 2011 dollars) in national home equity between 2005 and 2011, in part because of the decline in home prices."[46]

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[43] Special Inspector General for the Troubled Assets Relief Program (SIGTARP) (2009, July 21.) *Quarterly Report to Congress*. p. 129. Available at: http://www.sigtarp.gov/Quarterly%20Reports/July2009_Quarterly_Report_to_Congress.pdf.

[44] U.S. Government Accountability Office. (2013, Jan. 13). *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act*. p. 12. Available at: http://www.gao.gov/products/GAO-13-180.

[45] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act*. p. 16.

[46] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act*. p. 21. There is necessarily a significant amount of uncertainty around such analyses. Other estimates have placed the loss somewhat lower. A recent Congressional Budget Office study estimates the cumulative loss from the recession and slow recovery at $5.7 trillion." (Congressional Budget Office. 2012. *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*. p. 26.) One complicating issue is determining which losses should be attributed to the recession and which to other issues. For example, GAO notes, "analyzing the peak-to-trough changes in certain measures, such as home prices, can overstate the impacts associated with the crisis, as valuations before the crisis may have been inflated and unsustainable.[46] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act*. p. 17.

The recession threw millions out of work, and left millions still jobless or underemployed. "The monthly unemployment rate peaked at around 10 percent in October 2009 and remained above 8 percent for over 3 years, making this the longest stretch of unemployment above 8 percent in the United States since the Great Depression," GAO noted.[47]

The economic impact on families is crushing, even leaving aside social and psychological consequences. "Displaced workers—those who permanently lose their jobs through no fault of their own—often suffer an initial decline in earnings and also can suffer longer-term losses in earnings," reports GAO. For example, one study found that workers displaced during the 1982 recession earned 20 percent less, on average, than their non-displaced peers 15 to 20 years later.[48] Thanks to lost income and especially collapsed housing prices, families have seen their net worth plummet. According to the Federal Reserve's Survey of Consumer Finances, median household net worth fell by $49,100 per family, or by nearly 39 percent, between 2007 and 2010.[49]

The foreclosure crisis stemming from the toxic brew of collapsing housing prices, exploding and other unsustainable mortgages and high unemployment has devastated families and communities across the nation.[50]

The financial crash and Great Recession is also, not so incidentally, the primary explanation for historically high federal deficits. Reports GAO:

> From the end of 2007 to the end of 2010, federal debt held by the public increased from roughly 36 percent of GDP to roughly 62 percent. Key factors contributing to increased deficit and debt levels following the crisis included (1) reduced tax revenues, in part driven by declines in taxable income for consumers and businesses; (2) increased spending on unemployment insurance and other nondiscretionary programs that provide assistance to individuals impacted by the recession; (3) fiscal stimulus programs enacted by Congress to mitigate the recession, such as the American Recovery and Reinvestment Act of 2009 (Recovery Act); and (4) increased government assistance to stabilize financial institutions and markets.[51]

There are, to be sure, dissenting views to narratives that place regulatory failure at the core of the explanation for the Great Recession and financial crisis. Perhaps the most eloquent version of this dissent is contained in the primary dissenting statement to the Financial Crisis Inquiry Commission.

The dissent explained that "we … reject as too simplistic the hypothesis that too little regulation caused the Crisis,"[52] arguing that the *amount* of regulation is an imprecise and perhaps irrelevant metric. This is a reasonable position (and it applies equally to those who complain about "too

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[47] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act.* pp. 17-18.
[48] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act.* pp. 18-19.
[49] Cited in *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act.* p. 16.
[50] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act.* pp. 23-24.
[51] *Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act.* p. 26.
[52] *The Financial Crisis Inquiry Report.* (Dissenting Views By Keith Hennessey, Douglas Holtz-Eakin, and Bill Thomas.) p. 414.

much" regulation); what matters is the quality of regulation—both the rules and standards of enforcement.

The FCIC dissent began its explanation for the financial crisis with the creation of a credit bubble and a housing bubble, which it argued laid the groundwork for a financial crisis thanks to a series of other, interconnected factors, including the spread of nontraditional mortgages, securitization, poor functioning by credit rating firms, inadequate capitalization by financial firms, the amplification of housing bets through use of synthetic credit derivatives, and the risk of contagion due to excessive interconnectedness.

However, to review this list is to see how the FCIC dissent also implicitly argued that the crisis can be blamed in large part on regulatory failure. For all of these factors should have been tamed by appropriate regulatory action.

The Congressional response to the financial crisis, of course, was passage of the Dodd-Frank Act. Few people are entirely satisfied with the Dodd-Frank legislation—Public Citizen is highly critical of a number of important omissions—but the Act does include an array of very important reforms that will make our financial system fairer and more stable, if properly implemented through robust rulemaking.

B. Consumer Savings from Regulation

Many significant rules obtain dramatic savings for society and consumers. Some of these prevent consumer rip-offs; others introduce economic efficiencies that benefit consumers.

Examples include:

Fuel and energy efficiency standards. Forcing car and equipment makers to adopt more energy efficient technologies yields enormous savings for consumers, including small business and industrial consumers. Pursuant to the Energy Policy and Conservation Act, the Energy Independence and Security Act and the Clean Air Act, the National Highway Safety and Transportation Agency and the Environmental Protection Agency have proposed new automobile and vehicular fuel efficiency standards. The new rules, on an average industry fleet-wide basis for cars and trucks combined, establish standards of 40.1 miles per gallon (mpg) in model year 2021, and 49.6 mpg in model year 2025. The agencies estimate that fuel savings will far outweigh higher vehicle costs, and that the net benefits to society from 2017-2025 will be in the range of $311 billion to $421 billion. The auto industry was integrally involved in the development of these proposed standards, and supports their promulgation.

Similarly, pursuant to the Energy Security and Independence Act, the Department of Energy has proposed energy efficiency standards for a range of products, including Metal Halide Lamp Fixtures, Commercial Refrigeration Equipment, and Battery Chargers and External Power Supplies, Walk-In Coolers and Walk-In Freezers, Residential Clothes Washers.[53] The

[53] List of Regulatory Actions Currently Under Review. Available at: http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp.

Department of Energy estimates the net savings from implementation of the Energy Security and Independence Act to be $48 billion - $105 billion (in 2007 dollars).[54]

Generic competition for prescription medicines. Regulations facilitating effective implementation of the Drug Price Competition and Patent Term Restoration Act of 1984 ("Hatch-Waxman") have saved money for consumers by facilitating generic competition for medicines.[55] Generics now make up approximately 85 percent of the pharmaceutical market by volume, and save hundreds of billions of dollars annually as compared to brand-name costs; savings over the last 10 years total more than $1.6 trillion as compared to brand-name costs.[56]

New regulations to promote generic competition could save consumers still more. An overlooked component of the Affordable Care Act was the creation of a process for the Food and Drug Administration to grant regulatory approval for generic biologic pharmaceutical products—essentially generic versions of biotech medicines. Because the molecular composition of biologic drugs is more complicated than traditional medicines, FDA had adopted the position that, with some exceptions, it could not grant regulatory approval for biologics under its previously existing authority. In an important provision of the Affordable Care Act—supported by the biotech industry—FDA was explicitly granted such authority. The provision wrongly grants extended monopolies to brand-name biologic manufacturers, but belated generic competition is better than none. Implementation of the new regulatory pathway for biogenerics, however, depends on issuance of rules by the FDA. Biogeneric competition will save consumers and the government billions of dollars annually.[57]

The Clean Power Plan. In August 2015, the EPA finalized its first-ever rule to curb carbon pollution, known as the Clean Power Plan.[58]

Climate change is already harming consumers, and particularly vulnerable populations,[59] and its effects will worsen without prompt, assertive action. One type of damage involves infrastructure, property, and the economy:

- More extreme weather, such as hurricanes, heavy precipitation and flooding, threatens critical infrastructure. All consumers will bear the cost of repairs through higher taxes and market prices.[60]

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[54] U.S. Department of Energy. (2007). *Energy Independence and Security Act of 2007 Prescribed Standards*. Available at: http://www1.eere.energy.gov/buildings/appliance_standards/m/eisa2007.html.

[55]. D. E. (2003). *Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Amendments)*. Statement before the Senate Committee on the Judiciary. Available at: http://www.fda.gov/newsevents/testimony/ucm115033.htm.

[56] , Generic Pharmaceutical Association. (2015). *Generic Drug Savings in the United States*. Available at: http://www.gphaonline.org/media/wysiwyg/PDF/GPhA_Savings_Report_2015.pdf.

[57] See Weissman, R. and Brennan, H. (2014, December 18) *Competition Inhibitors: How Biologics Makers are Leveraging Political Power to Maintain Monopolies and Keep Prices Sky-High*. Available at: http://www.citizen.org/documents/report-biologics-industry-leverages-political-power-to-maintain-monopolies-and-inflate-prices.pdf.

[58] EPA. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Proposed Rule*, 80 FED. REG. 64,661 (Oct. 23, 2015).

[59] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment*, 34, 39 (2014).

- Droughts and downpours are diminishing water supply and water quality.[61]
- Extreme weather, increased weeds, pests and disease, and increased demand for energy and water threaten agriculture, decreasing food security and raising food prices.[62]

Climate change also endangers human health:

- Extreme heat events cause spikes in deaths from heat stroke and cardiovascular and respiratory disease.[63]
- Reduced air quality increases respiratory problems like allergies and asthma, leading to more emergency room visits and premature deaths.[64]
- Higher temperatures result in more diseases transmitted by insects, food and water.[65]

The Clean Power Plan will help avert all of these threats, albeit insufficiently.

Moreover, because the EPA plan curbs electric generation from the country's dirtiest power plants, it will reduce emissions of not just carbon dioxide, but also pollutants like sulfur dioxide, nitrogen oxides, mercury and hydrogen chloride.[66] For this reason, it will also provide significant health benefits. A recent study of a scenario similar to the EPA plan found that each year it would prevent 3,500 premature deaths.[67]

Climate change is a global challenge, and the Clean Power Plan does far too little even to reduce U.S. greenhouse gas emissions. But the Clean Power Plan makes progress. The EPA estimates that the Clean Power Plan will cost just $5.5 to $8.8 billion per year, in exchange for $32 to $93 billion in benefits.[68] In other words, the rule will *contribute* $26 billion to $84 billion to the economy per year—or $260 billion to $840 billion over 10 years. After 10 years, the vast majority of the rule's costs will have been incurred, but many of its benefits will continue in perpetuity.

But the benefits of the Clean Power Plan are not limited to reducing harm from climate change. The Clean Power Plan will affirmatively lower consumer energy costs. Detractors often argue

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[60] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment,* 12-13, 38-41 (2014).
[61] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment*, 13, 42-45 (2014).
[62] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment*, 13, 42-45 (2014).
[63] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment,* 9, 36 (2014).
[64] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment,* 34-36 (2014).
[65] U.S. Global Change Research Program, *Highlights of Climate Change Impacts in the United States: The Third National Climate Assessment,* 34, 36-37 (2014).
[66] EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, ES-9-10 (2014).
[67] Schwartz, J. et. al. *Health Co-Benefits of Carbon Standards for Existing Power Plants*, 3 (2014), available at: http://pubc.it/1rnbw2J.
[68] Environmental Protection Agency, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units;* Proposed Rule, June 18, 2014, 79 Fed. Reg. at 34,943-44.

that the EPA proposal will raise electricity rates. That claim focuses on the wrong question from the standpoint of electricity customers. For consumers focused on costs, the key question is what effect the Clean Power Plan will have on what they actually pay, which means their electricity *bills*. Although the retail price of electricity will rise modestly under the Clean Power Plan compared to a business-as-usual scenario, at least according to the EPA's excessively conservative assumptions, the rule also will spur improvements in energy efficiency so that people use less electricity. The net result is that electricity bills will fall, not rise.

The EPA estimates that, in addition to mitigating climate change and boosting public health, the Clean Power Plan will lower electricity bills nationwide by 7.0 to 7.7 percent by 2030 compared to a business-as-usual scenario, again using conservative assumptions.[69] A Public Citizen analysis shows that consumer electricity bills will fall in every state by 2030, again using the same overly conservative assumptions adopted by the EPA.[70]

C. Boosting Wages through Regulation

Through implementation of the Fair Labor Standards Act (FLSA), anti-discrimination law and other statutes, regulation has long played a key role in raising workers' wages and ensuring workplace fairness.

Two new regulatory initiatives illustrate how regulations continue to play a key role in raising American workers' wages.

Overtime Rule. The Labor Department's proposed overtime rule would modernize outdated standards related to overtime pay. Pursuant to the FLSA, it has long been a central tenet of American workplaces that employees are entitled to time-and-a-half pay for overtime – more than 40 hours of work in a single week. This rule has ensured workers are fairly compensated when required to work long hours; protected workers from unreasonably long work weeks by providing premium payments for overtime; and increased employment levels by spreading available work. Its purpose and effect is summed up by the notion "a fair day's pay for a fair day's work."

The time-and-a-half requirement does not apply to executive, administrative and professional ("white collar") employees who meet certain minimum tests, including a salary level test. The current salary level threshold for an exempt determination, established in 2004, is $23,660, a level that leaves the vast number of white collar employees in the non-exempt category, excluding many low-level white-collar employees from vital overtime protections, and forcing many to toil extended hours for what amounts to very low hourly wages.

The new overtime rule proposed to set the salary test at the 40th percentile of earnings for full-time salaried workers ($47,892 in 2013). The Labor Department estimates its new rule will expand the universe of non-exempt employees – those entitled to overtime pay – by 4.1 million in its first year of implementation, and between 5.1 and 5.6 million workers in the tenth year of

[69] EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, 3-40 (2015)
[70] Arkush, D. (2015, November). *Clean Power, Clean Savings*, Public Citizen. Available at: http://www.citizen.org/documents/Clean-Power-Clear-Savings-Report-November-2015.pdf.

implementation. This translates into increased worker wages of roughly $1.2 billion a year – not a net cost to the economy, simply a transfer from employers to workers.[71]

Pay Data Reporting. To make progress in reducing the ongoing pay gap between women and men workers, the Equal Employment Opportunity Commission (EEOC) is proposing to expand its data collection on wages paid by gender, race and ethnicity. Firms with fewer than 100 employees would be exempt from the new data reporting requirement, which merely requires reporting of data that employers typically already collect.

The EEOC proposal imposes no new substantive requirements on employers, but the simple act of data reporting is expected to reduce discrimination, making workplaces fairer and raising wages especially for women workers. As the EEOC notes, "The new pay data would provide EEOC and the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor with insight into pay disparities across industries and occupations and strengthen federal efforts to combat discrimination. This pay data would allow EEOC to compile and publish aggregated data that will help employers in conducting their own analysis of their pay practices to facilitate voluntary compliance. The agencies would use this pay data to assess complaints of discrimination, focus agency investigations, and identify existing pay disparities that may warrant further examination."[72]

IV. Regulation to assist small business and promote competitive markets

Much of the regulatory policy debate in recent years has misleadingly focused on the impact of regulation on small business, with regulation critics claiming that regulation poses unreasonable burdens on small business. In surveys and poll data, small businesses generally do not agree with their purported advocates. They cite inadequate demand and economic uncertainty as their biggest problems.[73] And regulatory law is replete with special and intentional protections for smaller firms, which are exempt from many rules, including in many of the cases noted in this testimony.

What has been missing from the regulatory policy debate is a focus on the ways that regulation does—or should—assist small business and start-ups in creating a level playing field.

First, as a preliminary matter in this area, policymakers concerned about aiding small business might fruitfully focus on the issue of regulatory compliance. Small firms may on occasion have difficulty discerning what standards apply to them and what they must do to meet their obligations under various rules. There may be value in legislation encouraging agencies to

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[71] Department of Labor. *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees: Proposed Rule*. Available at: http://www.dol.gov/whd/overtime/nprm2015/ot-nprm.pdf.

[72] Equal Employment Opportunity Commission. (2016, January 29). *EEOC Announces Proposed Addition of Pay Data to Annual EEO-1 Reports*. Available at: http://www.eeoc.gov/eeoc/newsroom/release/1-29-16.cfm.

[73] Small Business Majority. (2011). *Opinion Survey: Small Business owners Believe National Standards Supporting Energy Innovation Will Increase Prosperity for Small Firms*. Available at: http://smallbusinessmajority.org/energy/pdfs/Clean_Energy_Report_092011.pdf. Similarly, in a 2011 informal survey, McClatchy/Tribune News Service found no business owners complaining about regulation. Hall, K. G. (2011, 1 September). *Regulations, taxes aren't killing small business, owners say*. McClatchy Newspapers. Available at: http://www.mcclatchydc.com/2011/09/01/122865/regulations- taxes-arent-killing.html.

conduct more outreach, education and compliance assistance to small businesses on their regulatory obligations. Agencies with Small Business Ombudsman offices could be tasked with ensuring that those offices are conducting effective regulatory outreach and education to small businesses. "Best practices" guidelines for federal agencies could be established, including those with Small Business Ombudsman offices, to follow when working to ease regulatory compliance for small businesses.

A larger area of Congressional focus should aim to address the problem that leading sectors of the economy are highly concentrated, and that widespread anti-competitive conduct unfairly disadvantages small business and start-ups, while also hurting consumers and overall economic efficiency.

Congress and regulators should look to reinvigorate antitrust and competition policy. Action across a broad range of areas would very meaningfully advance small business success, and ensure smaller companies are not unfairly exploited, disadvantaged or eliminated by larger rivals.

- Large banks receive a massive implicit government subsidy thanks to the widespread market perception that these institutions are "too big to fail"—in other words, that protestations to the contrary, the government will in times of crisis bail out these giant banks to prevent a financial system meltdown. Because the market judges these institutions too big to fail, the giant banks are able to access capital at costs significantly below that are available to regular banks, as well as obtain other implicit subsidies. Various analysts place this benefit as ranging from tens of billions of dollars annually to more than $100 billion, with the scale of the subsidy varying over time.[74]

  Remedies: This subsidy plainly disadvantages smaller banks and credit unions, and is itself a compelling reason—there are many other such reasons—to break up the giant banks. At bare minimum, this goliath bank subsidy emphasizes the imperative of a financial sector competition policy that removes the unfair advantage giant firms obtain.

- Patent enforcement by patent acquiring entities—often known colloquially as "patent trolls"—imposes a significant tax on innovation, especially by small business. Enforcement actions and license fees by these entities are skyrocketing, now costing almost $30 billion a year, with researchers finding only a quarter of this total flowing back to innovation.[75]

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[74] See Federal Reserve of Minneapolis. (2013, November 18-19). *Workshop: Quantifying the Too Big to Fail Subsidy*. Available at: https://www.minneapolisfed.org/publications/special-studies/too-big-to-fail/quantifying-the-too-big-to-fail-subsidy. Bloomberg. (2013, Feb 20.) *Why Should Taxpayers Give Big Banks $83 Billion a Year*. Available at: http://www.bloomberg.com/news/2013-02-20/why-should-taxpayers-give-big-banks-83-billion-a-year-.html.

[75] See Leibowitz., J. (2012, Dec. 10.) *Patent Assertion Entity Workshop: Opening Remarks*. Federal Trade Commission. Available at: http://www.ftc.gov/speeches/leibowitz/121210paeworkshop.pdf ; Skitol. R. (2012, Dec. 14.) *FTC-DOJ Workshop on Patent Assertion Entity Activities: Fresh Thinking on Potential Antitrust Responses to Abusive Patent Troll Enforcement Practices*. Available at: http://www.antitrustinstitute.org/~antitrust/sites/default/files/PAE%20Workshop%20(3051321_1).pdf.

Remedies: Stronger rules should protect small business innovators, and innovative large corporations as well, from improper patent enforcement actions.

- Anticompetitive practices are widespread in the energy industry, including in electricity markets. "Anticompetitive agreements between sellers in regional wholesale electricity markets have forced consumers to pay hundreds of millions of dollars more for electricity than they would have in the absence of such conduct," notes the America Antitrust Institute's Diana Moss. "In these markets, which are structurally vulnerable to the exercise of market power, anticompetitive agreements spanning even a short time can result in large wealth transfers from consumers to suppliers."[76] Those consumers include small business.

  Recently, enforcement against anticompetitive conduct by the Federal Electric Regulatory Commission has picked up considerably, with FERC notably suspending companies found to have lied to regulators and engaging in anticompetitive actions. However, the deregulated structure of electricity markets creates the potential for anticompetitive activity, and suggests the need for new rules to ensure competitive benefits are actually accruing.

  Public Citizen has filed several complaints at FERC alleging energy market manipulation. In one instance, we alleged[77] – and FERC has made preliminary rulings that suggest it agrees[78] — that Houston-based Dynegy, Inc. may have intentionally withheld several of its power plants from a power auction conducted by the Midcontinent Independent System Operator (MISO), the results of which were announced on April 14, 2015. The auction was intended to procure adequate supplies through 2016 for most of downstate and midstate Illinois. The bidding strategies of Dynegy and other suppliers, combined with the rules under which the auction was conducted, pushed auction prices up for much of Illinois from $16.75 per megawatt-day last year to $150 this year, an increase of 800 percent. Even if illegal manipulation did not occur, the dramatic spike—resulting in a rate for Illinois that is more than 40 times that in neighboring states despite abundant generating capacity in Illinois—indicates a violation of the Federal Power Act's fundamental requirement that rates be just and reasonable. These are the sort of market abuses that impact small business and demand a regulatory response.

  Remedies: New rules should be created to ensure transparency standards apply to the non-governmental agencies, known as Regional Transmission Organizations, charged with running deregulated electricity markets. New rules should be established to ensure consumer, small business and state government representation in their decision-making

[76] Moss, D. (2013, Jan. 10.) *Collusive Agreements in the Energy Industry: Insights into U.S. Antitrust Enforcement.* American Antitrust Institute. p. 6. Available at: http://www.antitrustinstitute.org/~antitrust/sites/default/files/AAI%20Working%20Paper%2013-2_%20Section%201%20Energy.pdf.

[77] *Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.. Emergency Section 206 Complaint of Public Citizen, Inc. And Request For Fast Track Processing.* (2015, May 28). Available at: http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=5533.

[78] Reuters. (2016, January 4, 2016). Available at: http://www.reuters.com/article/utilities-dynegy-illinois-idUSL1N14O24220160104.

processes. Additionally, legislation or perhaps new regulation is needed to overturn the "filed rate doctrine," which can immunize electricity traders from antitrust liability where conduct involves regulated, filed rates.

- Private antitrust enforcement—an important tool for small firms victimized by unfair practices from larger competitors—has become increasingly difficult. One notable obstacle to effective private enforcement are unreasonably high pleading standards, which require victimized plaintiffs to make evidentiary showings that they frequently cannot make before undertaking discovery.

  Remedies: Congress should act to overturn the ruling in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), as well as *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

- Forced arbitration provisions in contracts are denying small businesses and consumers effective access to justice on a large scale. These provisions also often unfairly treat small business franchisees, which are often victimized by forced arbitration provisions in their franchise agreements.

  In recent years, the Supreme Court has issued a series of rulings holding that the pro-arbitration preference of the Federal Arbitration Act preempts state rules designed to ensure consumers access to traditional civil courts, as well as state rules protecting consumers' rights to join together in class actions. As a result, large corporations are able to include forced arbitration provisions in standard form contracts; and to insert anti-class action language into their arbitration provisions as a way to block collective actions that are often critical to addressing wrongdoing that affects large numbers of people in a small way.

  The Supreme Court's 2013 decision in *American Express v. Italian Colors Restaurant* illustrates the potential stakes for small business.[79] In this case, American Express sought to enforce an arbitration agreement that prohibits merchants that accept its charge cards from filing class actions or otherwise sharing the cost of legal proceedings against it. The merchants aimed to hold American Express liable for a tying arrangement that allegedly violated antitrust laws (American Express insists merchants accept its unpopular credit cards if they want to accept its popular charge cards), but because expensive expert testimony was required to prove the claims, the cost of arbitrating an individual case would dwarf any possible recovery. Even in this case, where the arbitration agreement and class action ban concededly made it impossible for a small business to bring an antitrust lawsuit against a large company, the Supreme Court held that the arbitration agreement was controlling. It did not matter to the Court that this was a case where a large company used its market power to force on small business a provision that prevents them from seeking a remedy to an abuse of market power.

[79] *American Express v. Italian Colors Restaurant*, 570 U. S. ____ (2013).

Remedies: Congressional remedies to these problems should include a prohibition on forced arbitration provisions in consumer, employment and civil rights cases[80] and a restoration of states' authority to enforce their contract and consumer protection laws.

V. Conclusion: Strengthening the System of Regulatory Protections to Strengthen America

There is much to celebrate in our nation's system of regulatory protections. It has tamed marketplace abuses and advanced the values we hold most dear: freedom, safety, security, justice, competition and sustainability. It's time to abandon ideological and non-empirical attacks on regulation and celebrate the actual achievements of regulatory protections.

But in its current form, the regulatory system is failing to meet its promise. We need a regulatory policy conversation that moves past the debate on the merits of regulations generally and proposals to hinder the rule-making process. Instead, Congress on a bipartisan basis should: look to reforms to strengthen regulatory enforcement, stiffen penalties for corporate wrongdoing, speed the rulemaking process, and adopt pro-competitive rules to level the playing field for small business and improve the economy and consumer well-being. The point should not be to have more – or less – regulation, but to make our country better and stronger.

[80] See the Arbitration Fairness Act, H.R. 2087, introduced by Representative Hank Johnson.

Mr. ISSA. Thank you. And certainly you got a rise positively when you talked about patent trolls. Thank you. Yeah, there you go. Dr. Bivens.

Mr. JOHNSON. Well with arbitration also.

Mr. BIVENS. Thank you.

Mr. ISSA. Something for everyone. Doctor?

TESTIMONY OF JOSH BIVENS, Ph.D., RESEARCH AND POLICY DIRECTOR, ECONOMIC POLICY INSTITUTE

Mr. BIVENS. I thank the Members of the Committee, and particularly the Chair and the Ranking Member, for the invitation to testify today. I am the Research and Policy Director of the Economic Policy Institute, and I am also a macroeconomist by training, which means I have a pretty decent grasp on what the best research indicates are the drivers of overall trends in job creation and wage growth.

This research is clear that regulatory changes at the Federal level are not primary drivers of these trends; and this finding applies both to the long historical record, as well as to recent economic history, for example, during the recovery from the Great Recession, a recovery that officially began in mid-2009.

Over the course of this recovery, there is really little evidence that a surge in excess regulation has held back either job growth or wage growth. Perhaps the clearest evidence of this can simply be seen by looking at the profitability performance of the U.S. business sector since the recovery began. The case that some regulatory surge since 2009 has strangled businesses' ability to expand really should rest on evidence that regulations are making production less profitable. But production has not become less profitable for American business since 2009. Both pre- and post-tax profit margins have essentially matched 50-year highs during the latest recovery.

And so, there is very little evidence that lack of profitability or anything about regulations imposing excess costs on businesses could really be holding back employment growth in today's U.S. economy; and people have noted that employment growth has not really been held back. We have had 71 straight months of private sector job growth. The one really clear weakness in job growth during the current recovery is the public sector.

Federal, state, and local governments have actually shed jobs about two-and-a-half percent over the course of the recovery, in very stark contrast to any other postwar recovery. In the recoveries in the early 1980's and early 2000's, public sector jobs grew by about 11 and 5 percent, respectively. So, it is really hard to see any fingerprints of excess regulation stunting job growth over the past 7 years.

You know, this is not to suggest that no rule ever cannot be disruptive to any community. If the argument is that regulations with net benefits should be accompanied by measures to ensure that no specific set of communities bear a disproportionate burden of the gross costs, that is a very worthy conversation to have. That is unfortunately not the conversation that we generally have about regulation.

Turning to wage growth, it is clear there is a genuine problem in the American economy. The bottom 70 percent of the wage distribution has seen essentially stagnant growth in hourly pay over about the last three decades. That includes the period in the late 1990's where wages were actually pretty good, when labor markets got very tight.

But the problem with stagnant wage growth certainly did not begin in 2009. Hourly wages for the bottom 70 percent were stagnant over the economic recovery that preceded the Great Recession. And hourly pay for the typical worker has actually steadily fallen behind growth in economy-wide productivity since the late 1970's. And this wedge between economy-wide productivity growth and hourly pay for the typical worker has been driven, in large part, by regulatory retreat, not regulatory overreach.

The fallout from the Great Recession is the clearest cause of stagnant wage growth recently. This recession was caused, as Rob mentioned, largely by the failure of regulators to check access in the financial sector.

Besides the regulatory failure that contributed to the Great Recession, the stagnation of hourly pay has been driven by intentional policy decisions, lots of regulatory decisions that took away traditional leverage mechanisms for low- and moderate-wage workers. The value of the Federal minimum wage was allowed to erode for excessively long periods of time without Congress raising it. The playing field was not kept level between willing workers who wanted to form a union and employers who were trying to block such efforts.

Federal protections guaranteeing the right to overtime pay were allowed to really stagnate as the salary threshold was not updated for inflation. Lack of enforcement in wages and hours has made wage theft rampant for low-wage workers. I would say American workers really do have real wage problems, but they do not have much to do with any alleged excessive regulations passed in recent years.

And I would echo the call that the regulatory debate in turn should hinge on the pros and cons of specific regulations, and not rely on sweeping claims about some bundled, homogenous mass of regulatory changes that are allegedly driving economy-wide trends in job and wage growth.

And with that, I thank you for your attention. I am happy to answer questions.

[The prepared statement of Mr. Bivens follows:]

Testimony of

Josh Bivens
Research and Policy Director, Economic Policy Institute

Before the

Judiciary Subcommittee on
Regulatory Reform, Commercial and Antitrust Law

"Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages and Startups"

Wednesday, February 24, 2016

Economic Policy Institute | 1333 H Street NW, Suite 300, Washington, D.C. 20005 | (202) 775-8810 |
www.epi.org

The premise of today's hearing, that regulations are dragging down job creation and wage growth, is wrong. It is a distraction from the real causes of sluggish living standards growth for the vast majority of American households, which are Congress's decision to embrace fiscal austerity rather than making job-creating investments in infrastructure and education to restore genuine full-employment, and the rise in inequality over the past generation of economic life. This rising inequality is driven by intentional policy decisions to shift economic leverage away from low- and middle-wage workers. A key part of this shift in leverage was the failure to update labor laws and labor standards to ensure that workers can bargain for a fair share of the growth they help create.

The business lobby's argument surrounding regulation as the source of economic distress centers on claims that these regulations squeeze business profitability, and that this blunts incentives to hire and leaves no room to pay higher wages. But that argument fails some very basic empirical tests. Regardless of the pace of new regulations, profits since the current recovery began have been historically healthy. This should provide plenty of incentive to create jobs and leaves plenty of room for employers to give raises. **Figure 1** below shows profit margins—unit profits divided by the price per unit of output – in the nonfinancial corporate sector. The latest data show pre-tax margins of 14.5 percent and post-tax margins of 10.6 percent. Between 1979 and 2007, these measures averaged 10.6 and 8.3 percent, respectively. In short, nothing in today's economic data would indicate that regulations or anything else is squeezing business profits and hurting potential job or wage growth.

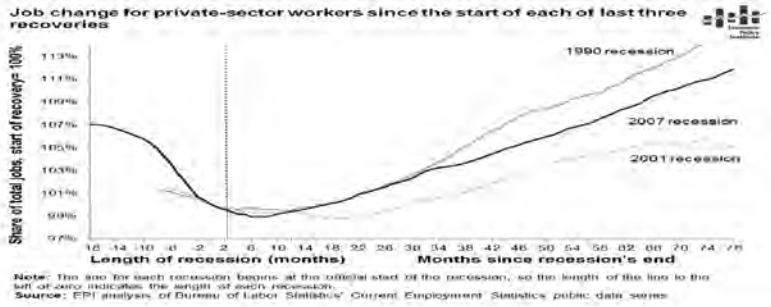
Figure 1

This piece of evidence really should end the argument. If regulatory changes aren't squeezing profitability it's really hard to see how they are hamstringing business. But we'll say a bit more about jobs and wages below.

Both the number and accumulated gross cost of federal regulations (before accounting for the benefits of those regulations) are higher now after seven years of the Obama administration (as they are higher after every successive administration), yet private-sector employment has grown faster during the recovery from the 2008–2009 recession than it did during the recovery from the 2001recession (as shown in **Figure 2** below).

Despite all of those years during which the Obama administration has supposedly overregulated, businesses have now added 14 million jobs over 71 straight months, extending the longest private-sector job creation streak on record (as shown in **Figure 3** below). Private employment rose by 158,000 jobs in January, while the strong private employment growth in November and December was revised up by a combined 15,000 jobs. Over the past two years, businesses have added 5.5 million jobs—the most in any 24-month period since 1997–1999).

Figure 2



This is strong evidence that the committee's view of the relationship between rule-making and the performance of the economy is wrong. By the committee's theory, as additional regulations are issued, job growth should shrink, yet private-sector jobs have lately been growing at the fastest pace in 20 years.

Of course, there is a sector of the economy that has been extraordinarily weak in the current recovery. The public sector in this recovery has badly lagged previous recoveries in the pace of job growth (as shown in **Figure 4** below). In fact, public-sector austerity overall (both direct employment of workers and in transfer payments and investments) can probably explain the entirety of why we have gone so long following the Great Recession without a full economic recovery.

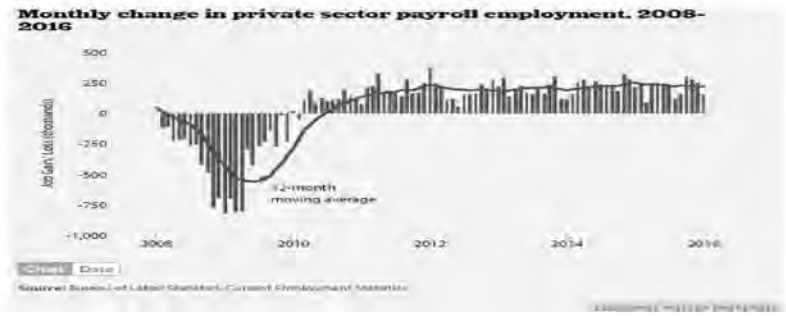
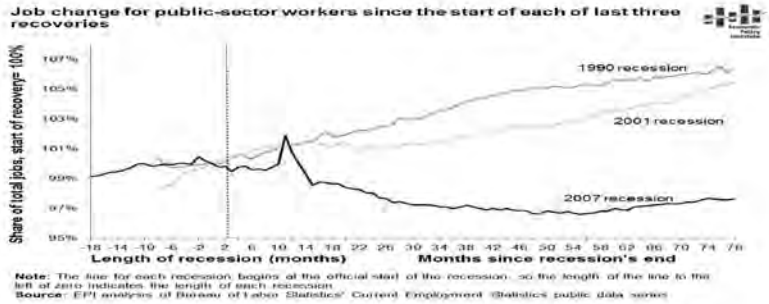


Figure 4



The business lobby's argument that regulations are inherently job-killing typically relies on vague, incomplete, or plainly one-sided evidence. For example, recent American Action Forum (AFF) testimony attributes a loss of fossil-fuel plant jobs, which have declined by 28 percent since 2008, to some degree to Environmental Protection Agency (EPA) rules (though the report admits, "There are other factors at work, namely the rise in renewable energy and the Great Recession").[i] AAF fails to mention, however, that renewable energy jobs have increased faster than fossil-fuel plant jobs have been lost. As the Solar Foundation reports, the solar industry alone, just one component of renewables, "continues to exceed growth expectations, adding workers at a rate nearly 12 times faster than the overall economy and accounting for 1.2% of all jobs created in the U.S. over the past year. Our long-term research shows that solar industry employment has grown by 123% in the past six years, resulting in nearly 115,000 domestic living-wage jobs."[ii]

Researchers at Duke University, using data from renewable-energy trade associations, estimate in a new study published in the journal *Energy Policy* that more than 79,000 direct and spinoff jobs were created from wind and solar electricity generation between 2008 and 2012.[iv] That compares with an estimate of about 49,530 coal industry job losses, according to the study. While natural gas was the biggest winner in creating jobs for electricity generation, with almost 95,000 jobs created in that time, it's clear renewable energy has been on the rise in the United States.

This highlights that the same regulations that put downward pressure on (some) fossil-fuel generation employment also provide incentives to invest in renewables and energy efficiency. This means that the net employment impacts of many regulations will be small (because there are cross-cutting effects), and that the result is often net positive job creation.

My own research into a couple of EPA rules, including a study of EPA's Clean Power Plan rule, indicates that by 2020 the rule will have helped create 360,000 net new jobs.[v] The boost to job growth moderates over the longer term (as the rule will mostly "pull forward" investments in renewables and energy efficiency that likely would have been made anyhow, just a bit further in the future). But this boost remains positive even in 2030.

This is not to suggest that the rule won't be disruptive to specific communities. Thousands of jobs in coal-fired utilities will be lost, as will coal mining jobs and jobs in some sectors (transportation of coal, for example) that supply inputs to these industries. If the argument is that some regulations with net benefits should be accompanied by measures (for example, direct fiscal relief to negatively affected communities) to ensure that that no specific set of workers or industries bear a disproportionate burden of the gross costs, then that's a reasonable and necessary argument to make.

But, of course, the actual argument made by many opponents of regulation is instead a simple statement that regulations just "kill jobs." On net, they generally don't.

To its credit, even though it has been an unrelenting critic of the Obama administration, the AAF in its testimony admits that the evidence of regulatory job loss is not strong, indicating only small impacts at the industry level and no clear impacts at the national level: "The general consensus is regulation does have an effect on employment, at least at the industry level. Generally, statistically significant results show small impacts on employment, but these figures can hide a real human component behind the cost of losing one's job. More research is needed in this field..."

Even researchers at the quite conservative Mercatus Center have thrown cold water on the notion that federal regulations are a drag on the economy. In a recent report, using a database that attempts to measure the extent to which regulations constrict the freedom of business to operate, Nathan Goldschlag and Alexander Tabarrok found no correlation between the increasing stringency of federal regulation and the economic dynamism of U.S. businesses.[vi]

The three authors of an important collection of essays on the impact of regulations on wages and employment recently summed up their research and findings: "We agree that economic theory does not provide a clear prediction for whether any particular regulation will have positive or negative net impacts on employment."[vii]

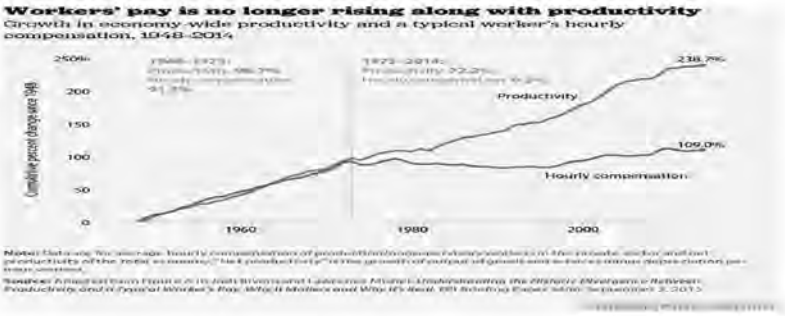
While job growth over the current recovery has been consistent and positive, wage growth, on the other hand, has indeed been weak. But again, the hand of a historically recent regulatory onslaught as the culprit here is awfully hard to see in the data.

For one thing, the weak growth of wages is not a new trend. It is unfortunately a trend that began late in the Carter administration and accelerated in the Reagan-Bush years. In fact, since 1979, inflation-adjusted wages grew across the board only during a brief period late in the Clinton administration when the economy attained something close to full employment (4.1 percent unemployment on average for two full years in 1999 and 2000).[viii]

And again, the hand of regulatory burdens in holding down wages is hard to see. Besides the healthy profitability documented before, the other avenue through which regulatory burdens could conceivably harm workers is by slowing the pace of economy-wide productivity growth. Productivity is the average amount of income and output generated in an hour of work in the economy. In the long run, it provides the ceiling on potential living standards growth. But this ceiling has been far out of reach for the vast majority of American workers in recent decades, as the wages of the bottom 80 percent of workers have not grown anywhere close to the pace of economy-wide productivity growth, as shown in **figure 5** below.

It is this growing *wedge* between productivity growth and wages for the vast majority, rather than the deceleration of overall productivity growth, that has been the primary force throttling wage growth. And this wedge has been the result of policy efforts aimed at shifting economic leverage away from low- and middle-wage workers and towards capital-owners and corporate managers. Productivity improvements used to be shared with employees, but in recent decades, owners of firms and top managers have resisted broad-based pay increases, and the traditional leverage mechanisms used by low- and moderate-wage workers to compel these raises—collective bargaining and strikes, minimum wage increases, tight labor markets—have been weakened or eliminated by policy choices

Figure 5

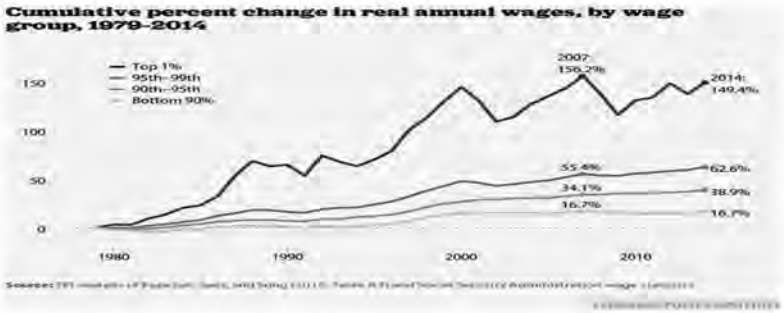


employers, that "higher costs will make businesses less competitive." Under that thinking, wages would never go up, unless entire industries coordinated and firms all raised their wages together. In fact, that kind of coordination, where every business is affected equally, is exactly the phenomenon that occurs when government forces wage increases by raising the minimum wage.

The result of the policy onslaught to shift economic leverage away from low- and middle-wage workers—to allow businesses to indulge their perennial reluctance to raise wages—is the staggering rise in inequality we've seen. The specifics of this policy campaign to shift economic power away from low- and middle-wage workers are identified—and solutions to reverse this shift detailed—in the Economic Policy Institute's Agenda to Raise America's Pay. A summary of the agenda is provided below, but one thing to note here is that overregulation is not on this list. In fact, the *retreat* of regulations that kept the playing field level between rank-and-file workers on one hand and capital-owners and top managers on the other hand, is actually part of the story. The erosion of the purchasing power of the federal minimum wage is one such regulatory retreat. Another example is the failure to update for the impact of inflation the salary threshold that ensures protection under overtime regulations. Yes another is the failure to keep employers from adopting ever more aggressive (and often illegal) attempts to fight efforts by workers to form a union, or even to simply collect the wages they have already earned.

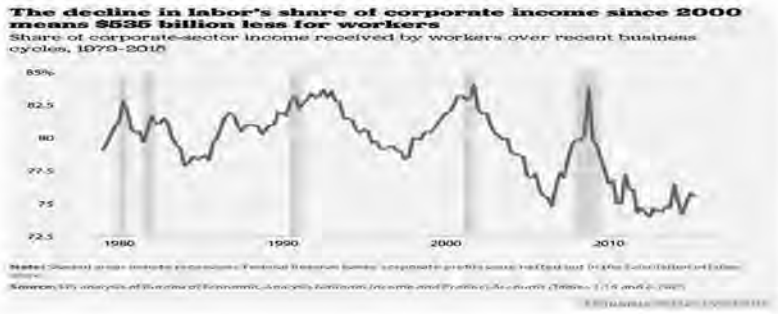
The proof of the effectiveness of this strategy to shift economic power from the bottom and middle to the top is in the wage-trends graph below, **Figure 6**. Annual earnings for the top 1 percent of wage-earners rose by about 150 percent between 1979 and 2014, nine times faster than annual earnings for the bottom 90 percent, which (buoyed a bit by longer hours worked by this group over time) rose by just 17 percent over this period.

Figure 6



This fracturing of economic outcomes has been particularly pronounced during the recent recovery, as workers' bargaining power has shown no sign of recovering at all from the damage wrought by the Great Recession. The share of corporate-sector income going to labor compensation rather than corporate profits reached historic lows during the recovery and has recovered only slightly from those lows in recent quarters (as shown below in Figure 7).

Figure 7



The wage problems of the vast majority of American workers are real—and they deserve a real response that is backed by evidence. Blaming these wage problems on a relatively recent alleged regulatory onslaught is not a serious or real response, instead it seems like a calculated distraction. Separating real from fake responses to the problem of anemic hourly pay increases is precisely why the Economic Policy Institute launched its **Raising America's Pay project.**

Policies that will actually work to boost American wages

As EPI's Agenda to Raise America's Pay explains, policies that will actually work to boost the hourly pay of the vast majority of American workers fall into three areas.[ix]

Section 1: Labor market institutions, labor standards, and business practices

Raise the minimum wage.
In 2015, the inflation-adjusted minimum wage is about 25 percent below what it was in 1968—even though productivity has doubled and the education and skills of those in the bottom fifth have greatly improved. Moving the minimum wage to $12 by 2020 would benefit about a third of the workforce directly or indirectly.

Update overtime rules. The share of salaried workers eligible for overtime has fallen from about 60 percent in 1979 to just 11 percent today. This is largely because only those earning less than $23,660 (a poverty-level wage) are covered by the Fair Labor Standards Act regardless of their workplace duties.

Fortunately, President Obama has instructed the Department of Labor to revise this salary threshold. If we move the threshold to the value it held in 1975—roughly $51,000 today—we would strengthen overtime protections for 13.5 million workers. This would provide them with higher pay and/or more leisure time, while providing incentives for companies to hire more workers.

middle-wage workers over the last few decades has been the erosion of collective bargaining, which has affected both union and nonunion workers alike. Making it easier for willing workers to form unions, increasing penalties for corporate violations of labor laws, and halting and reversing the spread of so-called right-to-work laws will help give workers the leverage they need to bargain for better wages and benefits and set high labor standards for all workers.

Regularize and extend labor protections to undocumented workers. Undocumented workers are vulnerable to exploitation by unscrupulous employers. Consequently, they earn lower wages than workers who have greater access to legal protections and are able to switch jobs more readily. President Obama's executive actions to provide work authorization to undocumented workers, and comprehensive immigration reform that in addition provides them a path to citizenship, are polices that will provide these workers with basic workplace protections and enable them to earn higher wages. Regularizing undocumented workers will not only lift their wages, but will also lift wages of U.S. workers in the same fields of work.

Provide earned sick leave and paid family leave. The United States has failed to adopt new labor standards that respond to emerging needs. In particular, we need updated standards to assist workers and their families in achieving a better balance between work and family. Providing earned sick leave and paid family leave would help to raise workers' pay—and would give them more economic security.

End discriminatory practices that contribute to race and gender inequalities. Generating broader-based wage growth must also include efforts to close race and gender inequities that have been ever-present in our labor market. We need consistently strong enforcement of antidiscrimination laws in the hiring, promotion, and pay of women and minority workers. This includes greater transparency in the ways these decisions are made and ensuring that the processes available for workers to pursue any violation of their rights are effective.

Support strong enforcement of labor standards. The enforcement of labor standards in the United States is so weak that hundreds of thousands of employers routinely fail to pay minimum wage or overtime, fail to protect employees from workplace hazards, fail to pay payroll taxes or worker's compensation premiums, or fail to provide family and medical leave. Wage theft alone costs employees tens of billions of dollars a year, and lack of worker's compensation coverage, unemployment insurance coverage, or Social Security coverage can cost them billions more. More enforcement and tougher penalties are needed to deter these violations, and access to the courts must be available to injured workers. Employers' growing use of forced arbitration—where employees, as a condition of employment, give up their right to sue in the public courts and are shunted into secret, private proceedings that can both be more costly and provide poorer remedies—must be stopped and reversed. As government enforcement resources decline, it is vital that workers have effective remedies in state and federal courts for labor standards violations.

Section 2: Restore full employment as primary policy target

A necessary condition for ending wage suppression is economic policy that ensures every worker who wants a job can find one. The reason for this is simple. In the absence of full employment, employers do not need to offer significant wage increases to attract and retain employees, as the

employment and raise America's pay, policymakers should:

Prioritize very low rates of unemployment when making monetary policy. Federal Reserve Board policymakers are now considering whether and how fast to continue raising interest rates throughout 2016. In essence, a decision to raise interest rates is a decision to slow the economy and weaken job and wage growth. Given that wages have stagnated and that many communities have yet to adequately benefit from the recovery, it is imperative that monetary policymakers keep their foot off the brakes and allow the recovery to proceed as quickly as possible. Policymakers should not seek to slow the economy until growth of nominal wages (wages *unadjusted* for inflation) is running comfortably above 3.5 percent (which is consistent with ongoing productivity growth of 1.5 percent and a target inflation rate of 2 percent).

Enact targeted employment programs and undertake public investments in infrastructure to create jobs. To obtain full employment for all, we need policies that can direct jobs to particular areas that suffer from high unemployment even when the national labor market is largely healthy. These policies can include public and nonprofit employment programs that create jobs by meeting unmet needs. Additionally, undertaking a sustained (for at least a decade) program of public investment can create jobs, raise our productivity, and spur economic growth.

Reduce our trade deficit by stopping destructive currency management by trading partners. Many of our major trading partners engage in intentional currency management —buying up dollar-denominated assets on global financial markets simply to depress the value of their own currency. This depressed currency value makes imports cheaper in the U.S. market and U.S. exports more expensive. This results in a larger trade deficit and slower job growth. Eliminating currency management could reduce the U.S. global trade deficit by between $200 billion and $500 billion each year, which could increase overall U.S. GDP by between $288 billion and $720 billion and create between 2.3 million and 5.8 million U.S. jobs. Congress and the president should reject any trade treaties that do not have enforceable provisions to combat currency management.

Section 3: Reining in the economic leverage of the top 1 percent

A final piece of the puzzle for raising wages for the vast majority is to restrain the growth of top 1 percent incomes. The major forces behind the doubling of the top 1 percent's income share since 1979 have been the expansion of the finance sector (and escalating pay in that sector) and the remarkable growth of executive pay. Economic research indicates that the increased incomes in finance and for executives do not reflect a corresponding increase in their efficiency. Rather, they are simply a zero-sum redistribution away from the rest of the economy and toward finance and corporate managers. Restraining the growth of such income will not adversely affect the size of our economy. It will instead allow the vast majority to claim a larger share of economic growth. To raise wages for the vast majority, policymakers should:

Use the tax code to restrain top 1 percent incomes. Tax preferences for executive pay can be eliminated or their use tied to the executive's firm giving wage increases equal to productivity growth. Others have recommended tying corporate tax rates to the ratio of executive pay to median worker pay, as well as changes to corporate governance procedures. Additionally, imposing a financial transactions tax can steer investments toward productive uses and away from speculation, and restrain unproductive financial activity and pay. Finally, higher top marginal

markets or suppress wage growth to make more income flow their way.

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[i] American Action Forum, "How the Administration's Regulatory Onslaught is Affecting Workers and Job Creators," Testimony, December 9, 2015.

[ii] The Solar Foundation, *National Solar Jobs Census 2015*.

[iii] Sean Cockerham, "Green Energy Job Growth Outpaces Losses in Coal Industry," McClatchy Washington Bureau, April 21, 2015.

[iv] Drew Haerer and Lincoln Pratson, "Employment Trends in the U.S. Electricity Sector, 2008–2012," *Energy Policy*, vol. 82, July 2015.

[v] Josh Bivens, *A Comprehensive Analysis of the Employment Impacts of the EPA's Proposed Clean Power Plan*, Economic Policy Institute, 2015.

[vi] Nathan Goldschlag and Alexander T. Tabarrok, *Is Regulation to Blame for the Decline in American Entrepreneurship?* George Mason University Working Paper in Economics No. 15-11, December 2014.

[vii] Christopher Carrigan, Cary Coglianese, and Adam M. Finkel, "Public Interest Comment on the Office of Management and Budget's *2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities*, September, 2014.

[viii] Lawrence Mishel, Josh Bivens, Elise Gould, and Heidi Shierholz, *The State of Working America, 12th Edition*, Economic Policy Institute and Cornell University Press, 2012.

[ix] Economic Policy Institute, "The Agenda to Raise America's Pay," 2015.

Mr. ISSA. Thank you. I will recognize myself for some questions. And doctor, since your microphone is still close, pull it in, Dr. Bivens. My father-in-law was a World War II Army Air Corps pilot. He was a bomber pilot out of England flying over Germany, and I am sure that when the Fourth Air Force and all these others were rating what happened on a given day, if they sent out 100 planes and 99 came back, it was a good day. And if they sent out 100 planes and 80 came back, it was a bad day; but whether you were one of one or among the 20, for you it was a really bad day regardless.

So, when you gave the macroeconomics view, you really were not addressing what is happening to an 80-person employer in Alliance, Ohio, who after 100 years is being faced with essentially having to buy her company anew, almost, just to comply with the regulation. For her, she is being shot down, is she not? Or a coal company that effectively is losing all of its resources through retroactive regulation. So, for those two, there is an economic impact, is there not?

Mr. BIVENS. Yep, there definitely is. There is also jobs created by regulatory changes as well.

Mr. ISSA. Yeah, usually here in Washington. That is true.

Mr. BIVENS. And for places that do energy efficiency to meet these same regulations that are affecting energy——

Mr. ISSA. Again, those are the people on the horse. You know, it is one of those amazing things, is here in Washington, they always think that more people on a horse makes the horse go faster, rather than more horses make it go faster. And this is also a place where, as you know, there is more horse's asses than horses.

But it is absolutely amazing to me that everybody thinks a good job is a job sitting on the back of a horse telling the horse to go faster, not actually getting more horses to actually pull the load.

Ms. Kaboth, I am going to focus on you in my short time, since we are fellow Ohioans, and although I went to Kent State, so it is a little different curriculum. But——

Ms. WHITACRE-KABOTH. I will not tell you what we say about Kent People.

Mr. ISSA. "If you cannot go to college, go to Kent." I know it.

Ms. WHITACRE-KABOTH. There you go. You already know.

Mr. ISSA. We know that. And then, we even say worse things about some of our athletic teams. However, let's go through 100 years of your family's history. I assume you were making bricks 100 years ago, including some of them on Pennsylvania Avenue, as you said in your testimony. Materials you use substantially the same 100 years ago?

Ms. WHITACRE-KABOTH. Yes. Basically it is clay and shale, raw materials from the ground. We used to use coal to burn them; now we use natural gas.

Mr. ISSA. Okay. So, 100 years ago, you used coal. You burned it naturally, the way they do in Hanoi today. So, black smoke, it was pretty awful, no question at all.

Ms. WHITACRE-KABOTH. Right.

Mr. ISSA. And as you switched from coal to maybe cleaning up coal a little bit, and then ultimately to natural gas. Either way, your particulate count went down much cleaner, right?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. Okay. And that transition occurred over many, many years, right?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. And so, you made a decision to convert your kilns or to buy new ones at the end of a cycle, when you decided to reinvest, right?

Ms. WHITACRE-KABOTH. Correct.

Mr. ISSA. So, the speed of new regulation at that time was one in which you were looking at changes in a way in which your company could meet those requirements and plan for them, right?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. Now, you mentioned that recently, you upgraded some of your equipment, and you bought—made a large capital investment, and that that capital investment was somewhat based on existing regulations you were complying with. And now you are being asked to comply with regulations when in fact that equipment is still relatively new. Is that your testimony?

Ms. WHITACRE-KABOTH. Yes, that is correct.

Mr. ISSA. So, in your case, if I understand correctly, for the 4 pounds of mercury a year that your plant would put out, and correct me if I am wrong, that 4 pounds of mercury at a given production level is about the same 4 pounds it was 100 years ago, right?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. So, we are not talking about a new pollutant. We are talking about something that was in place in the 1960's and 1970's when these laws were put in place.

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. So, after 40 or 50 years of the government having the ability to regulate, and after they regulated and caused you to make capital investments just a few years ago, they are now asking you to make another major capital investment: essentially, bet your company on new equipment to deal with something that is been around for 100 years and certainly for the 50 years, 40-some years of the Clean Air Act. Is that right?

Ms. WHITACRE-KABOTH. That is correct.

Mr. ISSA. So, your testimony today, if I understand it—and I just want to stick to your testimony because I have lived that life as a manufacturer—is there is nothing wrong with your wanting to invest in new equipment and reduce this. It is the fact that they want you to do it on their schedule, which is immediate, rather than on a reasonable schedule of compliance that gives you time to plan for and make those capital investments in the ordinary course of how people improve their business. Is that right?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. Last question. The age of your equipment—what is—you said you had relatively new kilns. How old are they?

Ms. WHITACRE-KABOTH. We have a kiln that was built in 1955. Our second kiln, we have been renovating, and it was built in 1960.

Mr. ISSA. And I am going to close with this. You mentioned that it took you years to get the loan so you could begin getting a new efficiency level that would save, I believe, half a million dollars a year?

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. And on a $4 million payroll, that is a lot of money.

Ms. WHITACRE-KABOTH. Yes.

Mr. ISSA. So, if the government really cared about the balance between your reducing CO2 emissions by taking $500,000 worth of burning of natural gas out versus this 4 pounds of mercury, they would actually be helping you get a low-cost lender loan so that you could reduce that consumption, would they not?

Ms. WHITACRE-KABOTH. That would be really nice.

Mr. ISSA. Sometimes we just miss Ohioans when we are looking for energy savings. Thank you. And I now recognize the Ranking Member for his questions.

Mr. JOHNSON. Thank you, Mr. Chairman and thank the members of the panel for coming here today to testify. Mr. Murray, it is your contention that regulations are what is resulting in your industry not doing as well as it had in the past?

Mr. MURRAY. Yes, sir.

Mr. JOHNSON. Which rules in particular, in addition to the Stream Protection Rule, are you unhappy with?

Mr. MURRAY. In addition to the Stream Protection Rule, we have the Clean Water Rule, the mine dust rule, the ozone rule, and the Clean Power Plan that we are currently dealing with, along with a myriad of other regulations that have been pushed under this Administration.

Mr. JOHNSON. Now, you are aware of the fact that 95 percent of the world's scientists, as I understand it, all agree that the burning of fossil fuels like coal produce heat-trapping gases that are the main cause of the ongoing rise in global atmospheric temperatures.

Mr. MURRAY. I am not a climate scientist; I am a coal miner. But I will say that by the EPA's own admission, you could shut down every coal-fired power plant in the United States, and it would have a negligible effect on the climate. That is a fact; they have stated as such.

I am here today to talk about the Stream Protection Rule. This is a real issue. It is a job killer. It is going to affect those on fixed income, low-income families, senior citizens, and it is a catastrophic rule that will destroy underground coal mining in this country.

Mr. JOHNSON. Well, you know, there are a lot of organizations that take a different view of the Stream Protection Rule, and they see a need for regulations to protect clean water, to enable us as people to enjoy clean water. And you know, regulations have their place, do they not?

Mr. MURRAY. Yes, absolutely. We are for clean water. There are laws on the books right now with the Surface Mining Control and Reclamation Act of 1977. Those rules are complied with daily. We have more environmental scientists on staff than we have mining engineers. So, we work with the state and Federal agencies continually and apply our good science and good faith and sincere concern for the environment on a daily basis and we work with those agencies. And the rules that are on the books now, they work, and they do not need to be materially rewrote under the Stream Protection Rule.

Mr. JOHNSON. Well, I can appreciate your view on that. And others have a different view. And, you know, the fact is the coal industry is subject to a lot of pressure from—I mean, Ms. Kaboth, her

industry or her company has moved away from coal-fired plants or coal-fired production to natural gas. Is that right, Ms. Kaboth?

Ms. WHITACRE-KABOTH. Yes, that is correct.

Mr. JOHNSON. And so, natural gas is one of your competitors, Mr. Murray. Is that not correct?

Mr. MURRAY. Absolutely. Yes, that is correct.

Mr. JOHNSON. That is another factor that is causing your industry to not be doing as well as it once did?

Mr. MURRAY. That is correct, yes.

Mr. JOHNSON. And you believe that—both of you believe, do you not, that health of workers is a legitimate area for regulation?

Mr. MURRAY. Absolutely.

Ms. WHITACRE-KABOTH. Yes.

Mr. JOHNSON. So, you are not contesting any occupational safety rules, occupational health and safety rules, are you?

Mr. MURRAY. In the mining sector, we have one called the mine dust rule, which on its face sounds like it is a health and safety rule that would help our miners but, in fact, it does not. But as far as occupational safety health measures, it is the only thing we would be contesting.

Mr. JOHNSON. And, Mr. Bivens, your conclusion is that these regulations have no impact on job creation or investment or profits or even wages for workers. Is that correct?

Mr. BIVENS. Not at the economy-wide level. There is definitely some shuffling of jobs. You do have some negative impacts in some sectors of the economy that are counterbalanced by positive impacts elsewhere. But aggregate trends—no, regulatory changes are just not a primary driver.

Mr. JOHNSON. All right. Mr. Weissman, you are the only attorney on the panel. I share that dubious distinction with you, although I appreciate having that distinction. Anything you would like to add?

Mr. WEISSMAN. I think it is just important to remember two things. One is that for——

VOICE. Could you move it a little closer?

Mr. WEISSMAN. Closer? Two things. One is that it is natural for regulated companies to push back against regulations that are newly being required of them. The record of industry complaining about the next regulation ready to destroy it is not a good one, including, I must say, in the coal industry particularly. But this is true going back to the New Deal and bankers, chemical companies, restaurant and hotels worried about clean air rules related to tobacco. I detail some of this in my testimony. That is one thing.

And the other thing is, the stories are compelling. And as Dr. Bivens suggested, individual firms may actually be impacted, but there are individuals who are benefiting as well, and we are not hearing from them today. The person who is protected from silica dust exposure and resulting cancer—that is a real, live life saved as a result of the rule that is being talked about here. And there is going to be hundreds of lives saved every year by the silica rule that we are discussing.

You go down the list of these, of the regulations, we are talking about; they have these net benefits. We aggregate them. But those net benefits are really an expression of the lives that are saved, the

lives that are improved, the quality of life that is guaranteed as a result of the rules that are under discussion today.

Mr. JOHNSON. All right. Thank you. My time has expired, so thank you. Mr. Chairman, I ask for unanimous consent to enter into the record a letter from the coalition of environmental groups in support of this, the stream rule, and also a letter from the American Sustainable Business Council that is regarding this hearing.

Mr. MARINO [presiding]. Without objection, so ordered.

Mr. JOHNSON. Thank you.

[The information referred to follows:]

Alliance for Appalachia * American Rivers * Appalachian Citizens Law Center * Center for Biological Diversity * Center for Coalfield Justice (Pennsylvania) * Clean Water Action * Citizens Against Longwall Mining * Citizens Coal Council * Earthjustice * Foundation for Pennsylvania Watersheds * Friends for Environmental Justice * Friends of the Earth * Greenpeace USA * Kentucky Resources Council * The Lands Council (Spokane) * League of Conservation Voters * Mountain Watershed Association * Natural Resources Defense Council * Northern Plains Resource Council * Ohio Valley Environmental Coalition * Powder River Basin Resource Council * Prairie Rivers Network * Sierra Club * Spokane Riverkeeper * Stand Up to Coal (Illinois) * 350 Colorado * Western Colorado Congress * Western Organization of Resource Councils * WildEarth Guardians

December, 2015

Dear Congressperson:

On behalf of our members, the above-listed organizations who actively work to address coal mining impacts across the United States, we wish to express our support for the Stream Protection Rule. We want to commend the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Obama Administration for their hard work on this important rule, and urge Congress to resist any efforts to roll it back. This rule is essential to protect the waters in mining regions, and to ensure that communities will have viable economies after the resource is extracted and mining ceases. It is essential to the long term well-being of our coal regions. OSMRE's careful and rigorous analysis of impacts on jobs in mining regions indicates that it would have a minimal effect

However, coal mines have damaged above and below ground hydrologic systems that are vital to meeting the future water needs of our communities. Clearly, the Stream Protection Rule is needed to provide clarity and foster better mine plans and reclamation.

Mountaintop removal mining generates some of the most damaging, large-scale environmental impacts of any industrial activity in the country. It is responsible for the destruction of over 500 mountains and approximately 2000 miles of stream channels across Central Appalachia. This form of coal mining devastates both the thriving natural ecosystems of the Appalachian Mountains as well as entire communities of residents who have lived on their homesteads for generations.

In Western coal regions, coal seams that are surface mined often are the aquifer that supports domestic uses and agriculture. Groundwater and intermittent streams are essential in a semi-arid, delicate ecosystem to sustain people, animals and plants.

Current rules fail to prevent serious, persistent, and unmitigated environmental harm from occurring. OSMRE needs to improve many aspects of its mining regulations in order to live up to the mandate that Congress set in the 1977 SMCRA. The Stream Protection Rule is an important step in setting the coal industry back on the right track. It provides clarity and protects water by defining material damage to the hydrologic balance, requiring collection of better chemical and biological monitoring data both before and during mining, ensuring protection and restoration of streams and related resources, and establishing enforceable numerical standards.

It will allow our organizations – and state, tribal, and federal regulators – to hold coal mining companies accountable when damage to water systems occurs and to more importantly better prevent damage from occurring in the first place.

For decades, longwall mine operators have asserted they can mine and successfully protect water. The stream protection rule ensures that will be the case. The coal industry has stated that the proposed rule would preclude longwall mining. What it actually does is hold the mining operator accountable by clarifying that underground mining activities are permitted only if they are located and designed to prevent any adverse impact that would preclude an existing, foreseeable, or designated use of any stream, lake, spring, or groundwater supply. That is not only a reasonable public policy aim under SMCRA, but is required by the Clean Water Act, which protects such water uses and requires compliance with water quality standards. Holding longwall miners accountable for long term water protection is appropriate.

The rule will also generate good restoration jobs at coal mines. According to the Draft Environmental Impact Statement (DEIS) cost-benefit analyses, in most scenarios, the OSMRE expects minimal job loss due to the new rule, because in most scenarios analyzed complying with the rule will create and offset any job losses where coal cannot be safely mined without destroying water resources.

OSMRE's analysis shows that the Stream Protection Rule can be implemented with minimal impacts to coal mine companies and coal production. The proposed rule makes coalfield communities more resilient for a diversified economic future and by safeguarding them from the long-term effects of pollution and environmental degradation that endanger public health and undermine future economic opportunities for affected communities. It also provides mining companies with the regulatory certainty that have long demanded by making it clear which requirements apply to which types of streams, and how to determine what types of streams are present.

While the rule should in fact be stronger, we urge Congress to support the proposed rule as a necessary step to protecting the nation's precious water resources and allow the rulemaking process to proceed without Congressional interference.

**Alliance for Appalachia * American Rivers * Appalachian Citizens Law Center *
Center for Biological Diversity * Center for Coalfield Justice (Pennsylvania) *
Clean Water Action * Citizens Against Longwall Mining * Citizens Coal Council * Earthjustice *
Foundation for Pennsylvania Watersheds * Friends for Environmental Justice * Friends of the Earth *
Greenpeace USA * Kentucky Resources Council * The Lands Council (Spokane) *
League of Conservation Voters * Mountain Watershed Association *
Natural Resources Defense Council * Northern Plains Resource Council *
Ohio Valley Environmental Coalition * Powder River Basin Resource Council * Prairie Rivers Network *
Sierra Club * Spokane Riverkeeper * Stand Up to Coal (Illinois) * 350 Colorado *
Western Colorado Congress * Western Organization of Resource Councils * WildEarth Guardians**

February 23, 2016

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Judiciary Committee
Washington, DC 20510

The Honorable Hank Johnson
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Judiciary Committee
Washington, DC 20510

Dear Chairman Marino and Ranking Member Johnson:

On behalf of the American Sustainable Business Council (ASBC), I am pleased to offer the committee this statement for the hearing, "Triple Threat to Workers and Households: Impacts Of Federal Regulations On Jobs, Wages And Startups."

The American Sustainable Business Council (ASBC) is a growing national coalition of businesses and business organizations committed to advancing policies that support a vibrant and sustainable economy. ASBC, through its partner organizations, represents over 250,000 businesses and more than 300,000 business professionals, including industry associations, local and state chambers of commerce, micro-enterprise, social enterprise, green and sustainable business, local living economy groups, woman and minority business leaders, and investor networks.

Good regulations tend to stimulate innovation and entrepreneurship in addition to limiting or preventing destructive forms of economic activity. For example, regulations that encourage alternative energy impede the use of fossil fuels, which reduces capital spending and jobs in the fossil fuel industries. However, alternative energy is much more responsive to technology-driven innovation, and so it provides much better opportunity for durable competitive advantage. In addition, it stimulates much more employment than fossil fuels. Each megawatt of electricity generated by wind and solar employs more people, pays higher salaries, and generates more capital investment than a megawatt of electricity generated from coal. This strengthens the consumer economy.

The Internet offers another example of how regulation stimulates economic growth. The free and open Internet has generated far more innovation, jobs, and investment returns than when telecommunications giants could restrict information flowing through their wires and ban third-party applications from their cellular phones. Good regulations do not stifle opportunity; they open up markets to new breakthroughs.

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ASBCOUNCIL.ORG

While some inside the Beltway claim that regulations are holding back our economic growth, ASBC has a different view. Along with other small business organizations, we released a poll of small business owners in February 2012, which found that small businesses don't see regulations as a major concern.

Our polling confirmed that small business owners value regulations if they are well-constructed and fairly enforced:

Small business owners believe certain government regulations play an important role.

- 86% believe some regulation is necessary for a modern economy, and 93% of respondents believe their business can live with some regulation if it is fair and manageable.
- 78% of small employers agree regulations are important in protecting small businesses from unfair competition and to level the playing field with big business.
- 79% of small business owners support having clean air and water in their community in order to keep their families, employees and customers healthy.
- 61% support standards that move the country towards energy efficiency and clean energy.

We believe the best approach to make the regulatory process work better for businesses is to increase capacity at the regulatory agencies. This would enable the agency ombudsmen to be more responsive and effectively address small businesses' questions when they arise; in our experience, this process works well.

Blocking, weakening or delaying critical standards and safeguards will worsen the already-uneven economic playing field that leaves many small- and medium-sized businesses at a competitive disadvantage. It also inhibits innovation in new technologies that can create good, sustainable jobs and create safer products, workplaces and communities. This will not benefit the economy, only pick a small group of winners and a larger group of losers.

Sincerely,

David Levine

David Levine
CEO & co-founder

Mr. MARINO. Okay. The Chair now recognizes the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. I will say this, though—and we are going to get to Mr. Murray and Ms. Kaboth. I thank you all for being a part of this panel. You actually work in industries and not discuss other industries, and I always think that the greatest thing about these panels—no offense to my legal experts and my think tanks—you are actually hiring people, getting people jobs, doing those kind of things that actually are being affected up here in Washington.

And being a part of this panel makes great sense. The thing that just—and I have sat up here for just a few moments. And again, Mr. Bivens is probably the most—and I am not saying dishonest or—the truthful thing you said just a moment ago was the shuffling of jobs—that one may have a problem in where it—you know where that greatest impact is shown is in Washington, D.C. We have been wonderful at creating jobs in Washington, D.C. We have been wonderful at creating regulatory impact jobs in Washington, D.C.

We have not been very good—I mean, when you have—I am going to just name some things here because, Mr. Chairman, this—I could not think of a better—I have got banks that are being regulated by more regulators than the bank has employees. And the regulators get mad because they do not have someplace to sit down.

Mr. Weissman, you just said the silica rule. I was in environmental monitoring before. You know what one of the problems with the silica rule is? They cannot get honest measurements. They cannot determine actual levels. You go to the granite industry in my district, and you actually go into one of these facilities where they are already using protective devices and try and measure ambient silicate. I mean, it sounds great. You are going to save so many other people. It sounds wonderful, but yet, the practicality is almost impossible to read.

You get into phosphate readings in Lake Lanier in northeast Georgia in which the phosphate levels taken from the sample are too small to be accurately counted, but yet the cities and counties are required to meet a level in which the Federal Government cannot even verify.

We talk about issues when it comes to the position of saying regulations help. There is nobody in this room, and this is where the straw man arguments often come out in this, that Republicans do not like regulations; we want unsafe air; we want to drink dirty water; we want to do this. That is ridiculous. What is unfair to the American people is to come up with rules and regulations and say, "Well, they do not affect people." I have got an industry in my district, RING, (?) which is a nonprofit. They are wanting to expand and want to do, but they got caught with the 50 full-time equivalent issue. Now, we can say that, you know, that regulations do not affect jobs, but they cannot afford to grow because of these regulations that have been put on them.

Every night that I am thankfully home, I get to sleep with and have a great relationship with a wife who is a teacher. I am tired of hearing my wife for 26 years—because one of the things we talk

about is jobs in this Committee and regulatory in this Committee is, we need an educated workforce, but, yet, we have an ever-expanding Department of Education up here, many who of which have never been in a classroom. Banking regulators who have never made a loan, telling the rest of the world how to make a loan: that is just ludicrous. Educators sitting in a cubicle saying, "Here is how you teach kids," and have never taught in a classroom.

It is not the fact if regulation matters. It is the fact of Washington on steroids thinking, "We know better than everywhere else." If you want to help industry, if you want to help manufacturers be—I have yet to walk into a factory in which the general manager says, "Doug, watch today. We are going to maim three people. Doug, I want you to watch this. We are hiding the ball, and we want to see people's fingers cut off today. It is fabulous. Watch it."

When you have OSHA, which lives off its own fine system, hiring regulators, increasing the fine schedule, and going in, and this is what they do. They fine first instead of showing businesses, "Here is a better way. Here is how you can fix the problem"—never seen that in your industries, I bet. But instead, it is because they have to keep their job. They are better than used car salesmen. OSHA inspectors have to write up and have to get fines, and then they settle the fines. If that is the regulatory environment that this country wants, then we are headed straight for disaster.

So, to say silica is going to save all these lives—Mr. Weissman, show me how you are going to measure that in the ambient air. Show me how that is actually going to save people. I believe several things. I believe you eat right, you exercise daily, you follow your doctor's instructions, you die anyway. There are some things in life that are just attributable to living, and to say we are going to save so many people by something that you honestly cannot measure is a disingenuous remark to a country that is struggling for jobs and education.

Mr. Bivens, you said it right. Regulations help some areas, and they hurt others. My problem is, they hurt these people on this end who are actually trying to give people jobs, and they help people up here who have never done the jobs. I do not have any questions, Mr. Chairman. I yield back.

Mr. MARINO. The Chair recognizes the gentleman from New York, Congressman Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chair. And I want to thank the witnesses for your presence here today. And if I could just start with Mr. Meyer, and perhaps we can take a macroeconomic approach to the economic situation that we find ourselves in today. Is it your view that regulations that have been put forth under this Administration have stifled economic growth in America?

Mr. MEYER. I would say that there are specific examples of regulation that have made it harder for young people to start businesses. But I would say this is by no means a phenomenon that is unique to this Administration. If you look back at the history of regulatory growth and accumulation, it has been unfortunately a bipartisan priority to continue increasing the size and scope of Federal regulation.

Mr. JEFFRIES. Now, we are in a period of unprecedented economic growth, correct?

Mr. MEYER. I would not call it unprecedented. I would agree that we have seen an impressive streak of monthly job growth. But we still have not reached levels that would be expected this long after the recession.

Mr. JEFFRIES. Seventy-one consecutive months of private sector job creation is impressive, correct?

Mr. MEYER. It is impressive that it is been unbroken. But if you look at the employment levels, especially taking into account decreased labor force participation, I think there are still a lot of problems going on in the labor force right now, especially——

Mr. JEFFRIES. Fourteen million jobs created under this Administration is impressive, correct?

Mr. MEYER. Yes, but if you look at, for young people, the labor force participation rate for teenagers now is at the lowest rate ever; same with for young adults 20 to 24, and this is not accounted for by increased education or increased people who are going to school. So——

Mr. JEFFRIES. Over the last 7 years, the unemployment rate has gone from over 10 percent to under 5 percent, correct?

Mr. MEYER. Could you say that one more time? Sorry.

Mr. JEFFRIES. I said, over the last 7 years, the unemployment rate has gone from over 10 percent to under 5 percent. Is that correct?

Mr. MEYER. Well, overall. But if we are looking at unemployment rates for young people, it is now still over 16 percent for teenagers, and it is pushing 9 percent for young adults 20——

Mr. JEFFRIES. Teenagers who would otherwise be in high school or college?

Mr. MEYER. These are ones who want a job and are looking for a job but are unable to find one.

Mr. JEFFRIES. I certainly think it is the case that we need to do more. I just want to make sure that the record is clear as it relates to the progress that has already been made over the last 7 years.

Now, you testified, I believe, that the length of the U.S. Code of Federal Regulation is preventing millennial entrepreneurship because, I want to get the quote right, "attempting to comprehend which of these million-plus restrictions apply to their businesses is a waste of young entrepreneurs' valuable time." Is that right?

Mr. MEYER. Yes, that was in my testimony.

Mr. JEFFRIES. Now, there are a whole host of other factors that limit the ability of millennials to pursue entrepreneurial activities, correct?

Mr. MEYER. Yes, there are many, among them, having trouble finding a job, student loan debt. There are a lot of other factors.

Mr. JEFFRIES. Now, let's focus in on what I think is the predominant problem that we have got in America. Student loan debt is now $1.3 trillion, correct?

Mr. MEYER. That is correct.

Mr. JEFFRIES. That is an unprecedented number in American history, correct?

Mr. MEYER. Yes.

Mr. JEFFRIES. And that level of student loan debt, which is strangling young people, limits their ability to purchase a home earlier than or along the same timeframe as prior generations. True?

Mr. MEYER. Yes. When 70 percent of graduates are graduating with an average of $30,000 in student loans, that does put a burden on your future.

Mr. JEFFRIES. And it may even limit their ability to get married, start a family consistent with the timeframe of prior generations, correct?

Mr. MEYER. I think that is one of the factors that has led to delayed marriages.

Mr. JEFFRIES. And would you not also agree that that $1.3 trillion number is probably the predominant factor in limiting millennials from taking an entrepreneurial risk because of the need to consistently pay off student loan debt on a month-by-month basis?

Mr. MEYER. Since the summer, since my book came out, I have traveled across the country and spoken to hundreds of millennials, a lot of them that want to be entrepreneurs. And student loan debt was brought up. But also, a lot of people, when they wanted to start their business, they thought it was as simple as, you know, have an idea, comply with a few basic tax and regulatory requirements, and then start earning money, or start providing opportunity to others. And they——

Mr. JEFFRIES. I appreciate that. I have got limited time, so——

Mr. MEYER. Okay, sorry.

Mr. JEFFRIES [continuing]. If I can just get one or two questions in.

Mr. MEYER. Yeah.

Mr. JEFFRIES. But I do really appreciate your thoughtful responses. Now, Facebook is a successful company, true?

Mr. MEYER. Yes.

Mr. JEFFRIES. And that was founded by millennials, correct?

Mr. MEYER. Yes.

Mr. JEFFRIES. Twitter is a successful company, correct?

Mr. MEYER. Correct.

Mr. JEFFRIES. Started by millennials. True?

Mr. MEYER. Yes, in general.

Mr. JEFFRIES. Snapchat is a successful company?

Mr. MEYER. Yes, and that——

Mr. JEFFRIES. Started by millennials, correct?

Mr. MEYER. Yes.

Mr. JEFFRIES. Okay. Uber is a pretty successful company. True?

Mr. MEYER. Yes.

Mr. JEFFRIES. Started by millennials, correct?

Mr. MEYER. Just over the millennial cutoff, but pretty close.

Mr. JEFFRIES. Okay. Yelp is a successful company, correct?

Mr. MEYER. Is—which company?

Mr. JEFFRIES. Yelp.

Mr. MEYER. Yes.

Mr. JEFFRIES. Started by millennials?

Mr. MEYER. I am not sure if Yelp's founder was a millennial or not.

Mr. JEFFRIES. Okay. No further questions. I yield back.

Mr. MARINO. Thank you. The Chair now recognizes the gentleman from Texas, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman. I think everyone here knows and hopefully agrees that unnecessary regulations hurt job growth and suppress wages, but we often talk about that conceptually. We talk about it in broad strokes. We talk about tens of thousands of jobs that will be crushed by a new regulation created by some unelected bureaucrat or the millions of dollars in compliance costs. But those tens of thousands of jobs are not just numbers; they are individuals, and they are families. They are hardworking Texans like a lot of the folks that I represent. And those millions of dollars in compliance costs do not just appear out of thin air. Those are funds that could otherwise be used to pay salaries or to create more jobs or to invest in future growth.

Just 2 months ago, Gallup released a poll that found that 69 percent of Americans name big government as the biggest threat to our country right now and in the future, not ISIS, not out-of-control spending, not a broken health care system, not a nuclear Iran. Now, those threats are certainly all real. But right now, 7 out of 10 Americans are most worried about a rapidly growing government, a government that does stifle opportunity instead of fostering it. And it is a real problem, as we are hearing today. It is forcing companies out of business that have been around for almost a century. Real people are losing their jobs. Businesses are not growing.

So, Dr. McLaughlin, I want to start with you. Regulators do not seem to understand that the world is interconnected. They appear to view each regulation in isolation and do not seem to understand that they are actually crushing the jobs of their fellow Americans. I want to give you an opportunity to elaborate on this very narrow-minded, naive, in my opinion, view of the world.

Mr. MCLAUGHLIN. Thank you. Yes, typically a regulatory impact analysis performed by a regulatory agency looks at a single proposed rule in isolation and that is not a bad thing. But it is also necessary to consider that rule as part of a system of rules. And to paraphrase, actually, Ranking Member Johnson, there are nuanced questions concerning the interplay of various forces here, and those should be considered. Complexity of the regulatory system can in itself be a negative force in our economy.

Mr. RATCLIFFE. So I think you would agree with me that the claimed societal benefits of regulations are often inflated. And if you do agree with me, who is it that is pushing the inflated benefit estimates, and why are they doing that?

Mr. MCLAUGHLIN. A couple of thoughts on this. First, the benefits estimates that are typically referred to are coming out of agencies' estimates before they make regulations. They are not estimates after the fact. It would be wonderful if we could implement a system of measuring both costs and benefits after rules have had their effects and we understand whether they are actually working or not. That would be a good way, if there is inflating going on, to avoid that.

But second, I also think it is relevant to consider the incentives of anyone who is engaged in a measurement activity, whether it is agencies or someone else. If agencies have incentives to make their numbers appear one way or the other, then perhaps you want to

have independent analysis or another analyst take a look as well to corroborate.

Mr. RATCLIFFE. Thank you, doctor. Ms. Kaboth, your testimony touched on two very troubling trends that we are seeing: one, out-of-touch regulators who seem to have no grasp of the real-world impact of the regulations. You said they need to understand the local impacts of their rule on real people whose real lives may be ruined by losing their job. I could not agree more.

You also discussed a troubling pattern by this Administration of imposing an illegal regulation forcing the industry to spend sometimes millions of dollars to comply with it, only to then have courts throw that regulation out. And by that time, of course, it is too late for the companies who have spent all that money to do anything about it and to comply. So, as an individual business owner and an employer, I want to give you an opportunity to talk a little bit about the human element and consequence of those two trends.

Ms. WHITACRE-KABOTH. My family has owned this company for 100 years, and a few years ago we had to make a decision with our next generation of owners if we wanted to continue to make brick, or if we wanted to try and cash out. It was becoming more expensive to be a manufacturer. The markets were smaller, and one of the things that we really talked about was the role of regulation. How much were we going to have to spend in the future, and would it be worth it? It is expensive to make brick. Everything about it is expensive, frankly. However, when we talked about it with the entire—we got the entire family together, and we all wanted to invest in continuing to make brick. And it was not just us, because the people that we work with—we have worked with their families for a long time, and we feel responsible for the 80 people that work at our plant. It is not very many people, but they are our people and we want them to continue to have jobs.

Mr. RATCLIFFE. My time has expired. I would just like to say this in closing: that your company has been in your community for almost a century. That is quite a feat. Congratulations. It would also be quite a shame if the reason it stopped doing business was—after nearly a century—was because of unnecessary regulatory interference. With that, I yield back, Mr. Chairman.

Mr. MARINO. Thank you. I will now recognize myself for several questions. And I apologize for being late, but I had a piece of legislation on the floor that I had to be present for. I want to thank you all for being here. I know everyone is genuinely concerned about the issues presented to them. We just have a different aspect of how to get there, but I will get to you two gentlemen in a moment.

I want to ask Mr. Weissman—excuse me, Mr. Murray—Mr. Weissman referred to something in his testimony that, "a history of regulated industries' Chicken Little claims about the devastating impact of proposed rules." Would you share with me some of the conversations you have had with people that—in your company about what they have expressed to you about losing their jobs or the potential of losing their jobs? What it is going to mean to them and to their families?

Mr. MURRAY. Thank you, Mr. Chairman, for your question. It is devastating. I have talked to many of our employees. We have 2,000 that are laid off right now. I have had to lay off many of

them myself. They express outrage. Financially, they have nowhere to go. And there is no job for them to go to. Our coal miners are making around $80 to $100,000 a year. These jobs are irreplaceable anywhere in their community.

Some of the greatest reward in my career has been when I have hired someone that literally was working at a fast food restaurant and we gave him a job opportunity; he improved his standard of living, bought his first house, had his first child, grew up, sent his kids to college. We get to see those things on a daily basis, and with this Stream Protection Rule, that will not continue to exist.

Mr. MARINO. Thank you. Ms. Kaboth, you say compliance with OSHA's silica rule threatens the entire industry. Can you share with us how many silicosis cases have you had in the last 40 to 50 years with your company?

Ms. WHITACRE-KABOTH. None at Whitacre-Greer, which is what I know. None.

Mr. MARINO. I would like to read something into the record. "In January of 2016, the Bureau of Labor Statistics' seasonally adjusted U-3 unemployment rate fell to an 8-year low of 4.9 percent. But this figure masked workers who are underemployed or who have left the workforce. When those categories are included, the picture is much more troubling. The Bureau of Labor Statistics' U6 employment number, which includes those who cannot find full-time work, and those about a million, stands at 9.9 percent, almost 10 percent, more than twice the U-3 rate."

So, I see that all the time in my district. People who have good-paying jobs are now rated as being full-time employed because they are cutting grass or working part-time at a fast food stand.

Gentlemen, there is no one that is more concerned about the environment as I do. I live out in the country. I get my water from the ground. I have children, and I want to protect them with my life. But we are getting to a point where—well, just let me read you something—actually, I do not have the quote; I will find it, and get it in the record. But an international organization stated that—they were talking about China and India. They are the single—China, but in addition to the other country I named, are the single largest sources of pollution in the world, not only with coal, but also with what they are burning, and what they are dumping into their waters.

And it goes on to refer to—that if the United States stopped using all fossil fuels whatsoever, it would be negligible, if anything, that would have any impact on cleaning up the environment. So, I do believe that humans do create pollution problems, but I do not agree with the extent that is, I think, being propagated out there.

[The information referred to follows:]

- The Daily Caller - http://dailycaller.com -

A Climate Treaty Is Pointless Unless China And India Cut CO2

Posted By Andrew Follett On 1:44 PM 10/21/2015 In | No Comments

No matter what the U.S. does to fight global warming, it's efforts will amount to nothing if China and India keep increasing carbon dioxide emissions, according to expert research.

The problem is partially why the Obama administration has long claimed that the United States must "lead by example" as, mathematically, American CO2 reduction schemes are futile without global participation.

China is, by far, the world's largest emitter of carbon dioxide and has been since 2006, while India has long accounted for the largest share of global emissions growth. According to a 2014 study by the European Union, China emits 29 percent of the world's carbon dioxide while the US is only responsible for 15 percent of the world's emissions (the European Union itself only accounts for 10 percent and India accounts for another 6 percent.)

CO2 emissions are declining rapidly in the United States, United Kingdom, France, and Germany, the nations most interested in negotiating a treaty. Developed countries simply cannot cut enough emissions to account for the emissions growth of developing countries.

Developed nations have already made all the easy and cost effective emissions cuts, making additional cuts disproportionately expensive. American emissions have already declined by roughly 10.4 percent in the last 5 years for which data was available, largely because clean burning natural gas is replacing dirtier coal power.

The costs of reducing emissions further for the United States is incredibly high, comparable to the cost of fighting a major war. For example, a fully implemented version of the Environmental Protection Agency's Clean Power Plan would cost consumers and businesses a staggering $41 billion or so annually. That's comparable to the $40 billion or so the US spent on fighting the Iraq War in 2006. Yet, according to analysis by the libertarian Cato Institute, using models created by the Environmental Protection Agency, all that spending will only advert only 0.019° Celsius of warming by the year 2100, an amount so small that it couldn't be detected.

The $140 billion the European Union spends annually on renewable energy subsidizes prevents 6 times fewer carbon emissions than the fall of the Soviet Union did. In fact, the massive annual expense of European renewable subsidies adverts only as many emissions as very simple, and virtually free, land-use changes in India have.

Furthermore, under its proposed Paris commitments, India can triple its CO2 emissions by 2030. Even with that, India has expressed disappointment in the draft text of the U.N. Climate Change Conference in Paris with their climate change minister saying he was "not at all happy" with the draft for reasons of "equity." An estimated 400 million Indians, 31 percent of the population, lack access to electricity, so the country is reluctant to adopt any policy which could slow down growth.

India has made it clear that it will only begin reducing its emissions if it receives substantial assistance from Western countries, equivalent to $2.5 trillion over the next 15 years in direct

aid, grants, and cheap financing.

Attempts to reduce the emissions of developing economies have proven very ineffective, as they would inevitably be costly and reduce economic growth. For example, in exchange for a commitment by the United States to reduce its carbon emissions by 26 to 28% by 2025, China only agreed to stop increasing its emissions footprint by 2030. Even the deal's supporters agree that it alone is "very unlikely to keep future warming below 2 [degrees] Celsius", the benchmark beyond which they say climate change will be "dangerous."

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Mr. MARINO. I am not sure which one of you, but you stated that jobs, in your opening statement, stated that jobs are created when jobs are lost; and I invite you to come to my district, the 10th Congressional District of Pennsylvania and I can assure you—there is an electric plant that generated electricity using coal. It is out of business. I can assure you, those people are not coming to Washington to get a job.

So, you know, can—you know, the benefits that you are stating, I think, Dr. Bivens, you stated quite a bit the benefits of this: they are overstated, as well as the other side of the coin here.

So even looking at the banking industry—I hear it from the banking industry. I hear it from the coal industry, manufacturing, the food industry; OSHA, EPA, the Labor Bureau: the regulations are just crushing jobs in my district. I had a banker just tell me, when I was in my district last week, for—if I have the figures right—17 days, 12 regulators were in their bank. So, they had to pay so much attention to those people, they were not giving the customers the service that they really deserved. They were not working on loans. They left, and everything was fine.

So, I think the pendulum is swinging in the wrong direction, and even though my time has expired, as the Chairman, I have a little bit of clout here and I will certainly give my colleague, if he wants to ask other questions, but what do you suggest?

I mean, you are both very well educated men, but have you ever—and please do not take this personally—have you ever visited a coal mine? Have you ever visited an electric-generating power plant? Have you ever visited a construction site where a guy builds three houses a year in trying to make a living, but he cannot now because now he has to build a reservoir at the tune of $20,000 within a three-house project to take care of so-called runoff water? Help us out here. Mr. Weissman?

Mr. WEISSMAN. Well, a few things, Mr. Chair. First, on the environmental point you made, there are some global environmental issues like climate change. In that case, it is not true that if the U.S. were to go to zero emissions, it would have no impact on the global problem. It would have——

Mr. MARINO. I did not say no impact; that it would have negligible impact.

Mr. WEISSMAN. It would not be negligible. It would have a significant impact and would also have a demonstration impact that would change other things. But——

Mr. MARINO. Yeah, but you think we should be demonstrating to the world, to China, who keeps pumping out the burning coal, at the risk of us losing jobs?

Mr. WEISSMAN. I will answer; I do not want to try to dodge your question. But I did not want to ignore the other pieces of what you were saying. No. I mean, obviously the U.S. is not going to go to—is not on track to go to zero emissions. If you actually look at the Clean Power Plan, though, as I discuss—and which is the actual plan on the table, as I discuss in my testimony—that will lower electric bills for consumers. So, it is going to be both a net savings on cost-benefit analysis. But just on the consumer side, in terms of what we spend on electric bills, we will save money as a result of the Clean Power Plan.

Mr. MARINO. In the long run. But what do you say to the electric plant that puts scrubbers in that they were supposed to put in 5 years ago and then gets another order from EPA saying, "Now you have got to put this on top of the scrubbers," which costs millions and millions of dollars, and 172 people are put out of work? I mean, there has to be a cost analysis in here taking into consideration the jobs, and as far as expanding jobs in D.C., believe me, you do not want to go there with me.

Mr. WEISSMAN. I mean, I am happy to go there with you because I agree with you. There are too many jobs that the regs—and to the earlier member's point about distrust of big government, the stories about regulated industry having too much power, not being subjected to an overreach Washington—that is what people are objecting to—that big corporations have too much influence, that they are the ones who are writing the rules, that they have too many lobbyists here.

Unfortunately, Public Citizen and our friends—we are not really a match in terms of numbers. That is not really the problem. So, I agree that there is a broad perception of that. I think the assessment of what that means is off. I do not think actually people are saying they want the government to stand aside. They just want the government to stand with them.

I take very seriously job loss. Mr. Issa is gone; I am from Cleveland as well, and I come from an auto family. I come from a family that works with injured workers. I know these issues quite well. No one from Cleveland is insensitive to the issue of job loss. But if we think about regulatory issue and job loss, there is no question that the most significant impact was the regulatory failure that led to the Great Recession. And if we want to sort of talk about what is the role—what is the connection between regulation and jobs, that we did not prevent the financial sector from causing the Great Recession, by far the biggest story of the last 7 years on job loss.

Mr. MARINO. Okay, I do not dispute you with that. In fact, I agree with you. But from a regulatory perspective of banks and lending, sure, that is important. We need a certain degree of regulation, but I was more so pointing to examples of manufacturing jobs in my district, which is a rural district and a farming district. And I think you are aware of what the EPA tried to do in the farming industry with the Army Corps of Engineers—simply saying because there is a puddle of water on a farmland, this gives them the right, through the Navigable Waters Act, to come in and to regulate.

Listen, I live in the middle of five farms. I have not seen a boat come through there yet, but I think we want the same thing. It is just a different approach. Dr. Bivens, do you want to respond to any of this?

Mr. BIVENS. If I could, really quickly. I mean, a couple people have said it now: the claim that the jobs created by regulatory changes are in D.C. There is no evidence that they show up in D.C. And in fact, if you look over the past recovery, it is the public sector that has been really weak in job creation, historically weak in job creation, while the private sector has done very well.

So, you take the environmental regulations we have talked about. The jobs created through regulatory changes—they are con-

struction workers retrofitting buildings and weatherizing them. It is people who manufacture and install renewable capacity; some people bringing forward natural gas capacity sooner than it would otherwise. It is not jobs in D.C. They are entirely outside.

Mr. MARINO. And I agree with you, particularly in the natural gas aspect, one of the most clean-burning fossil fuels that we have. I mean, we should be building an infrastructure on that.

But again, you are comparing apples and oranges. You are comparing sitting behind a desk doing something, where most people in the United States do not sit behind a desk. They are farmers. They work in factories. They have to go to part-time jobs because we do not have the industry in this country because, in part, because of the environmental controls and OSHA and others. So, we could debate this.

I would love to talk to you more so in the future about this. But given the fact that we are running close to 5:00, we are going to shut down now the question-and-answer part of this. And I appreciate everything that all of you have brought to our attention because these are clearly hearings that we want to get the facts. We want to get issues out. And that will help us make determinations on how we legislate or should be legislating in this country.

So with that, this concludes today's hearing. I want to thank all you witnesses once again for coming here, spending time with us, traveling here. And I want you to have a safe trip back to wherever you are going. And without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record. And this hearing is adjourned.

[Whereupon, at 4:40 p.m., the Subcommittee adjourned subject to the call of the Chair.]

APPENDIX

Material Submitted for the Hearing Record

Material submitted by the Honorable Tom Marino, a Representative in Congress from the State of Pennsylvania, and Chairman, Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Regulating Away Competition

The Effect of Regulation on Entrepreneurship and Employment

James Bailey and
Diana Thomas

September 2015

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Abstract

Many scholars have worried that regulation deters entrepreneurship because larger firms can overcome the costs of complying with regulations more easily than smaller firms. Using novel data on the extent of US federal regulations by industry at the four-digit NAICS (North American Industry Classification System) level, the RegData database of the Mercatus Center at George Mason University, and data on firm births and employment from the Statistics of US Businesses, we run fixed effects regressions to show that more-regulated industries experienced fewer new firm births and slower employment growth in the period 1998 to 2011. Large firms may even successfully lobby government officials to increase regulations to raise their smaller rivals' costs. We also find that regulations inhibit employment growth in small firms more than in large firms.

JEL codes: L26, L51, J68

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Regulating Away Competition

The Effect of Regulation on Entrepreneurship and Employment

James Bailey and Diana Thomas

1. Introduction

The literature on the relationship between institutional quality and economic growth suggests that better institutions tend to be associated with better long-term growth and are an important indicator of overall economic well-being (Hall and Jones 1999; Acemoglu, Johnson, and Robinson 2001; Djankov, McLiesh, and Ramalho 2006). Countries that have better institutions (open access to political power, greater constraints on the executive, and greater political rights) tend to have less burdensome regulation and, as a result, tend to perform better in terms of economic growth (Djankov et al. 2002).

One important input into economic growth is new firm creation. The institution that theoretically matters most for the creation of new firms is regulation of entry. As the number of procedures required before starting a new business increases, fewer new businesses will enter the market (Djankov et al. 2002). More generally, however, a higher overall level of regulation in a country can benefit larger incumbent firms that have the resources to shoulder compliance costs while their smaller competitors falter in the face of an increasing regulatory burden.[1] Incumbents may even pursue such regulation of entry deliberately to protect themselves from competition by new entrants (Tullock 1967, Stigler 1971, Peltzman 1976).

Studies of institutional quality and its effect on entrepreneurship have so far focused on the quality of institutions by country (Djankov et al. 2002; Nyström 2008; Byørnskofv and Foss

[1] Maloney and McCormick (1982) show for an example of environmental quality regulation that such regulation benefits larger producers in an industry. Lacy Glenn Thomas (1990) estimates the effect of Food and Drug Administration regulation on research and development expenditures by pharmaceutical firms of different sizes and finds similar results.

2008). Such studies suffer from the problem that healthy economies usually score well on a number of different institutional variables, making it difficult to isolate the specific effect of a particular variable. Klapper, Laeven, and Rajan (2006) try to correct for this weakness by using an interaction between an industry's natural propensity for entry and a country's regulatory burden. This leaves them with a measure of the relative magnitude of the effect of regulation of entry on naturally high-entry industries only, however, rather than with an absolute measure of the effect of regulation on new firm creation. Using novel data on the changing intensity of regulation by industry for the United States from the RegData database of the Mercatus Center at George Mason University, we are able to provide a better estimate of the absolute effect of regulation on new firm creation and employment growth by industry.

The following section reviews the theoretical and empirical literature on the relationship between regulation and entrepreneurship. Section 3 describes the data we use in this study. Section 4 provides details of our empirical strategy. Section 5 summarizes our results, and section 6 concludes.

2. Literature Review

Regulation, although often intended to address some perceived market failure, may come at the cost of greater barriers to entry for new firms that seek to enter the market. Knowing the ins and outs of the regulatory framework that governs a particular industry represents a fixed cost of doing business that can be difficult for smaller entrants to an industry to overcome (Maloney and McCormick 1982).

The public choice literature on regulation, following Tullock (1967), suggests that regulation is promoted by the regulated industry itself and usually benefits existing producers

(Stigler 1971; Peltzman 1976). This view of regulation assumes that politicians cater to business interests to maximize their private reelection prospects. The public choice model is in conflict with the classic public interest model of regulation following Pigou (1938), which holds that regulation can counteract market failures and is instituted by government officials to maximize the general welfare.

Using data on entry regulation by country to test these two theories, Djankov et al. (2002) find that for a sample of 85 countries, countries with more open access to political power, greater constraints on the executive, and greater political rights tend to have less burdensome regulation. Stricter regulation of entry is not associated with higher-quality products, better pollution records or health outcomes, or livelier competition, as the public-interest model of regulation would predict. Instead, the authors find that countries with stricter regulation of entry are more likely to exhibit sharply higher levels of corruption and a larger unofficial economy. The authors conclude that their evidence supports the public choice model of regulation, which predicts that regulators are captured by industry and operate for its benefit.

Following up on Djankov et al. (2002), Klapper, Laeven, and Rajan (2006) provide the microfoundation for the relationship between regulation and growth. The authors use European firm data and country-specific cost-of-entry data from Djankov et al. (2002) to study the effect of market entry regulations on the creation of new limited-liability firms, the average size of entrants, and the growth of incumbent firms. Their analysis suggests that new firm creation, especially in naturally high-entry industries, is limited when barriers to entry are high. They also find that new entrants tend to be larger when regulatory requirements for entry are more burdensome and that incumbent firms tend to grow more slowly when competition is reduced in that manner.

Sobel, Clark, and Lee (2007) use the total entrepreneurial activity index from the Kauffman Center's Global Entrepreneurship Monitor to represent a general measure of entrepreneurial activity. The authors find evidence that entrepreneurial activity is negatively affected by both domestic entry restrictions and barriers to international competition (trade barriers).

Nyström (2008) uses data on economic freedom by country from the Fraser Institute and self-employment as a measure of entrepreneurship and finds that a smaller government sector, better legal structure, and security of property rights, as well as less regulation of credit, labor, and business, tend to increase entrepreneurship. In the same issue of *Public Choice* and also using the economic freedom index to measure institutional quality, Bjørnskov and Foss (2008) find that the size of government is negatively correlated with entrepreneurial activity as measured by survey data from the Global Entrepreneurship Monitor Consortium. The authors similarly find that the sound money measure from the economic freedom index is positively correlated with entrepreneurial activity. None of the other measures of economic freedom, including regulation, are significantly correlated with entrepreneurship.

Sobel (2008) examines the relationship between institutional quality and different types of entrepreneurship for the 48 US states. More specifically, Sobel finds evidence that supports Baumol's (1990) theory of productive, unproductive, and destructive entrepreneurship, which suggests that institutions channel generally prevalent entrepreneurial tendencies into either productive economic or unproductive political opportunities.

All the existing studies suffer from the problem that regulation is usually industry specific but their measures of regulatory burden or institutional quality more generally are country or state specific. Klapper, Laeven, and Rajan (2006) try to compensate for that

shortcoming by creating an interaction between an industry's natural propensity for new entry and the country's regulatory burden. The interaction leaves the authors with a relative measure of the effect of regulation on new firm creation.

In this paper, we use a novel dataset on regulation by industry for the United States—RegData—to overcome that shortcoming and provide an absolute measure of the effect of regulation by industry on new firm creation. We describe the new dataset in more detail in the next section.

3. Data

To quantify the effect of regulation on firm size and employment growth, we use industry-level data on firms from the Statistics of US Businesses (SUSB), together with RegData's index of regulatory intensity and several control variables. Our sample contains data from 215 industries for 1997–2011.

The SUSB is compiled annually by the US Census Bureau using data on the full population of US firms—it is not simply a sample subject to sampling error. We use the dynamic version of the SUSB maintained by the Office of Advocacy of the US Small Business Administration. The dynamic SUSB provides information on the number of new firms in each industry (firm births), the number of firms exiting each industry (firm deaths), and the number of employees hired and fired for each industry. Key variables from the SUSB are summarized in table 1. The data identify industries down to four-digit North American Industry Classification System (NAICS) codes. The NAICS breaks down industries to progressively greater levels of detail, starting with the two-digit level, such as 31 (manufacturing). Three-digit codes dig deeper, with industry classifications such as 311 (food manufacturing). Four-digit codes provide still

greater detail, with industry classifications such as 3111 (animal food manufacturing) and 3112 (grain and oil seed milling). The SUSB describes 290 four-digit industries. Although the SUSB began in 1988, it first used the older Standard Industrial Classification system before transitioning to the NAICS in 1998. To ensure consistency in the industry classifications in the data, we use only the 1998–2011 SUSB information.

Table 1. Summary Statistics for Key Variables

Variable	Mean	Standard deviation	Minimum	Maximum	Observations
Firm births (all sizes)	2,543	4,608	0	38,092	2,494
Firm births (1–4 employees)	1,545	3,097	0	27,992	2,492
Firm births (500+ employees)	348	851	0	9,806	2,490
Firm deaths (all sizes)	2,474	4,349	0	40,944	2,494
Firm deaths (1–4 employees)	1,558	3,098	0	35,922	2,492
Firm deaths (500+ employees)	314	813	0	10,882	2,490
New hires (all sizes)	24,105	50,131	0	495,723	2,363
New hires (1–4 employees)	3,281	5,823	0	46,722	1,817
New hires (500+ employees)	12,798	27,691	0	330,961	1,802
Industry Regulation Index	21,602	79,127	0.022	734,866	2,494

Source: Data on firm births, firm deaths, and new hires are from the 1998–2011 Statistics of US Businesses; data on the Industry Regulation Index are from the 1998–2011 RegData database.

Note: Observations are at the industry-year level, with industries measured using four-digit NAICS (North American Industry Classification System) codes.

Our data on regulation come from RegData. Compiled by the Mercatus Center, RegData tracks how much of each year's *Code of Federal Regulations* applies to each industry. The index of regulatory intensity is based on text analysis of the *Code of Federal Regulations*, which is published annually and contains all regulations issued at the federal level. More specifically, the index contains a search term count of the number of occurrences of a list of words that are likely to indicate binding constraints. The words are "shall," "must," "may not," "prohibited," and "required." In addition to that search term count, the RegData index, which measures the intensity of regulation of a particular industry, also contains a

measure of industry targeting. The industry targeting measure quantifies how frequently the regulations produced by a specific regulator target a specific industry. See Al-Ubaydli and McLaughlin (2014) for details.

Previous attempts to quantify the extent of regulation compared the overall level of regulation in different states or countries. RegData is the first dataset to quantify the level of regulation by industry, and it does so for 215 separate industries. A further advantage of RegData is that it measures the intensity of regulation by counting constraints. Previous work has tended to use cruder measures such as page counts (Coffey, McLaughlin, and Tollison 2012; Dawson and Seater 2013) or, in recent years, file-size data from state statutes (Mulligan and Shleifer 2005). Such attempts to measure the extent of regulation have obvious shortcomings. Not all the information contained in the *Federal Register*, for example, is dedicated to regulation. Furthermore, not all pages, even when they are dedicated to regulation, are equal. A particular page could be of enormous consequence in terms of its regulatory impact, or it might have little effect. To mitigate some of the shortfalls of existing measures of regulation by industry, RegData focuses on the number of binding constraints that apply to a particular industry.

RegData was recently expanded to classify industries down to the four-digit NAICS level. That level is consistent with our dynamic SUSB firm data, with the exception that RegData tracks only 215 four-digit industries compared with the SUSB's 290. RegData has available data for the period 1997 to 2012.

We use several indicators of the overall business and macroeconomic climate as control variables, presuming that firm births and deaths by industry are driven by general factors as well as by industry-specific ones. Our data on real gross domestic product growth, the Gross

Domestic Product Price Index, gross domestic private investment, and corporate profits come from the US Bureau of Economic Analysis. Our data on unemployment, real output per worker, industrial production, 10-year Treasury interest rates, and unit labor costs were obtained from the Federal Reserve Bank of Saint Louis's FRED (Federal Reserve Economic Data) database. All control variables are available from 1997 to 2012.

Our study focuses on the period 1998 to 2011. The limiting factor is the availability of the dynamic SUSB data; RegData also goes back only to 1997. As table 1 shows, these 14 years are enough to give us a reasonable number of observations because we observe so many industries in each year.

4. Empirical Strategy

Our main empirical strategy is to estimate the effect of regulatory burdens on firm births, firm deaths, and employment across industries using a 1998–2011 panel of data. Our main fixed effects regression is as follows:

$$\ln(FirmBirths)_{it} = b0 + b1 \times \ln(RegulationIndex)_{it} + b2 \times year_t + b3 \times industry_i + b4 \times controls_t + e_{it},$$

where firm births by industry are drawn from the SUSB; the index of regulatory intensity is drawn from RegData and is described earlier; $year_t$ represents year dummies; $industry_i$ is a dummy for each four-digit NAICS industry; $controls_t$ is a vector of economic control variables described below; and e is the error term. Industry fixed effects are the key to our identification strategy. They account for the fact that some industries may persistently have more firm births than other industries for reasons apart from regulation—for instance, they may be large or have naturally low barriers to entry.

Our control variables are real gross domestic product growth, the Gross Domestic Product Price Index, gross domestic private investment, corporate profits, unemployment, real output per worker, industrial production, 10-year Treasury interest rates, and unit labor costs.[2] In separate regressions, we use the natural log of firm deaths by industry and the change in employment by industry as dependent variables.

We use the natural log of our main variables of interest because they are highly right skewed, as is demonstrated by kernel density graphs in the appendix (see figures A1 and A2). The use of natural logs also makes interpreting the results easier—understanding the meaning of an increase of 1 in the regulatory index is difficult, but understanding the meaning of a 1 percent increase is easy.

5. Results

Firm Births

Table 2 summarizes the results of our analysis for the effect of regulation on firm births for firms of different sizes as well as for all firms in the sample.

The results suggest that a 10 percent increase in the intensity of regulation as measured by the RegData index leads to a statistically significant 0.5 percent decrease in overall firm births. Regulation is also associated with a similar statistically significant decrease among small firms, though it has no statistically significant effect on large firms. This finding supports the hypothesis that incumbents benefit from regulation because it deters new entrants. Our estimate

[2] Because these variables are observed at the national level each year, they are perfectly collinear with year dummies; including them in a regression together with year dummies causes some variables to be dropped. Thus, we use year dummies as our only national-level controls in the regressions reported in the body of the paper. In the appendix, we show the results from using the economic controls listed plus a linear time trend instead of year dummies. The results are nearly indistinguishable from those when we use only year dummies.

of the effect of regulation on firm births of large firms is not statistically significant, a fact that provides some support for the idea that larger firms are better able than smaller firms to deal with regulatory compliance costs.

Table 2. Effect of Regulatory Index on Firm Births

Variable	All firms	Small firms	Large firms
Regulatory index	−0.0499***	−0.0426**	−0.0639
	(0.0183)	(0.0172)	(0.0478)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	34.5***	16.8***	4.9***
R^2 (within)	0.16	0.11	0.03
Observations	2,493	2,486	2,380

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors clustered by industry are given in parentheses. The number of observations is similar across firm types because the Statistics of US Businesses is a firm-level survey that is aggregated to the industry-year level for public use.

Firm Deaths

Table 3 summarizes our findings for the effect of regulation on firm deaths. The results suggest that regulation has no statistically significant effect on firm deaths. The finding supports the idea that incumbents usually benefit from regulation—regulation drives away new entrants (as seen in the reduced number of firm births) but it does not put existing firms out of business (there is no increase in firm deaths). In fact, there is some evidence that deaths among large firms actually decrease: a 10 percent increase in regulation is associated with a 0.9 percent decrease in the deaths of large firms (though this is statistically significant at only the 10 percent level of increased regulation).

Table 3. Effect of Regulatory Index on Firm Deaths

Variable	All firms	Small firms	Large firms
Regulatory index	−0.0141	0.0003	−0.0906*
	(0.0217)	(0.0216)	(0.0476)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	13.1***	10.5***	12.9***
R^2 (within)	0.07	0.04	0.06
Observations	2,492	2,475	2,449

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors clustered by industry are given in parentheses. The number of observations is similar across firm types because the Statistics of US Businesses is a firm-level survey that is aggregated to the industry-year level for public use.

New Hires

Table 4 summarizes our results for the effect of regulation on employment growth. The results suggest that regulation deters hiring overall. A 10 percent increase in regulation is associated with a statistically significant 0.9 percent decrease in hiring. The effect for small firms is slightly smaller; a 10 percent increase in regulation is associated with a 0.5 percent decrease in hiring. The effect for large firms is not statistically significant.

Table 4. Effect of Regulatory Index on New Hires

Variable	All firms	Small firms	Large firms
Regulatory index	−0.0931***	−0.0535***	−0.0907
	(0.0320)	(0.0199)	(0.0566)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	27.8***	10.6***	8.8***
R^2 (within)	0.18	0.09	0.09
Observations	2,362	1,810	1,690

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors clustered by industry are given in parentheses. The number of observations is similar across firm types because the Statistics of US Businesses is a firm-level survey that is aggregated to the industry-year level for public use.

Alternative Measures

Results not presented here show that an alternative measure of regulation, the total number of different regulators of an industry, has no effect on firm births, firm deaths, or hiring. We also find no statistically significant effect on firms of the level of regulation coming from specific large regulators such as the US Environmental Protection Agency or the US Department of Health and Human Services. The results suggest that, at least by using firm births, firm deaths, and hiring as measures of firm activity, we cannot support the theory of the anticommons.

So far we have investigated the effect of regulation in a year on firm behavior in the same year. But some regulation may not take effect immediately, especially if it is put in place near the end of the year. In table 5, we investigate the effect of this year's regulations on next year's firm births, firm deaths, and new hires. The results are similar to the main results that found the current-year effect of regulation. Regulation leads to a statistically significant reduction in hiring and firm births for firms overall and for small firms and a reduction in the deaths of large firms.

Table 5. One-Year Lagged Effect of Regulatory Index on Firm Births, Firm Deaths, and New Hires

	Firm Births		
Variable	All firms	Small firms	Large firms
Regulatory index	−0.0470**	−0.0359**	−0.0567
	(0.0182)	(0.0179)	(0.0530)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	36.0***	17.5***	5.5***
R^2 (within)	0.17	0.12	0.04
Observations	2,287	2,281	2,180

continued on next page

Firm Deaths

Variable	All firms	Small firms	Large firms
Regulatory index	−0.0215	−0.0212	−0.0911**
	(0.0211)	(0.0199)	(0.0451)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	12.5***	11.4***	10.6***
R^2 (within)	0.07	0.04	0.06
Observations	2,287	2,271	2,246

New Hires

Variable	All firms	Small firms	Large firms
Regulatory index	−0.0629***	−0.0482**	−0.0860*
	(0.0242)	(0.0194)	(0.0467)
Year dummies	Yes	Yes	Yes
Industry dummies	Yes	Yes	Yes
F-statistic	28.5***	11.3***	8.7***
R^2 (within)	0.18	0.09	0.10
Observations	2,168	1,652	1,538

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors clustered by industry are given in parentheses. The number of observations is similar across firm types because the Statistics of US Businesses is a firm-level survey that is aggregated to the industry-year level for public use.

Robustness

One possible concern with a long-run panel study like ours is that we find spurious correlations, driven by the fact that our dependent variables and our measure of regulation both increase over time even though they may not be causally related to each other. We believe our study deals with this situation by using year fixed effects and by using what are essentially first-differenced variables—we measure flows (firm births, firm deaths, and new hires) rather than stocks (current number of existing firms and current number of employees). Formal tests for a unit root in our dependent variables confirm this intuition. A Fisher unit-root test using augmented Dickey-Fuller tests rejects the null hypothesis of a unit root for all our dependent variables (with $p < 0.01$ for all variables).

Another way to address concerns about causality in a panel setting is to investigate Granger causality: to see whether changes in one variable occur before changes in another. Granger causality tests with one lag show that regulation Granger-causes firm births, but firm births do not Granger-cause regulation. Similarly, regulation Granger-causes new hires, but new hires do not Granger-cause regulation. Neither firm deaths nor regulation Granger-cause each other; that finding matches up with our insignificant results for overall firm deaths.

6. Conclusion

Using novel data on the intensity of regulation by industry, we provide evidence that supports the idea that regulation has a negative effect on new firm creation and employment growth. Small firms are affected more dramatically than are large firms in our sample, but neither small nor large firms seem to exit an industry when the intensity of regulation increases. In fact, we find that large incumbents are actually less likely to die when their industry becomes more regulated. That finding suggests that incumbents, in particular, benefit from increasing levels of regulation and provides support for the idea that incumbents might actively seek increasing regulation to deter entry and limit competition (consistent with capture theory).

We find that a 10 percent increase in regulation leads to a 0.5 percent reduction in new firm births and a 0.9 percent reduction in hiring. Over the period 1998 to 2011 that we study, RegData shows that the overall level of federal regulation increased by 24 percent. Thus, our results suggest that from 1998 to 2011, increased federal regulation reduced the entry of new firms by 1.2 percent and reduced hiring by 2.2 percent. That result implies that returning to the level of regulation in effect in 1998 would lead to the creation of 30 new firms and the hiring of 530 new employees every year for an average industry.

Overall, our results confirm that regulators should be more aware of the important tradeoff between regulation and firm creation—and, by extension, economic growth. Regulators should consider more carefully the potential economic effects of their decisions regarding new and expanding levels of regulation.

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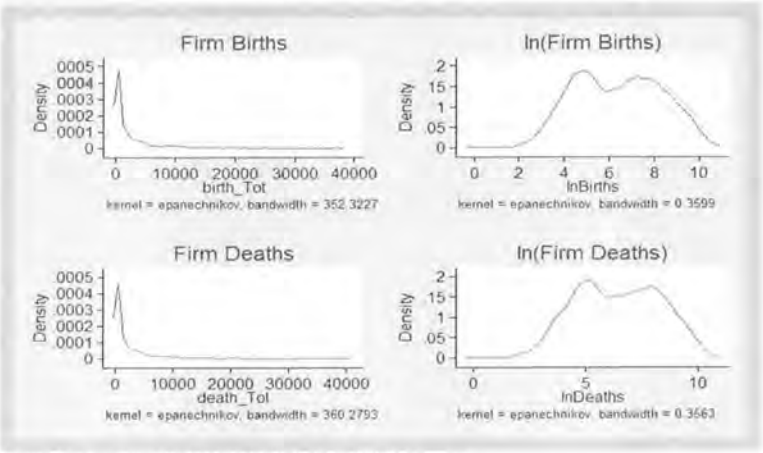
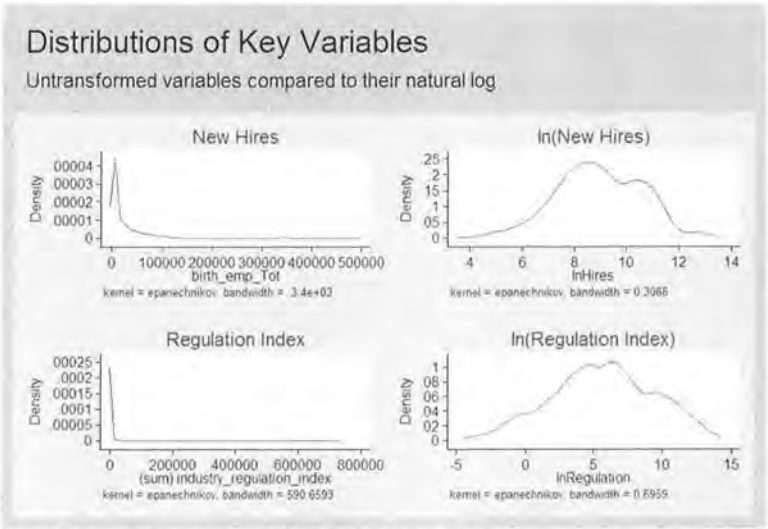
Appendix: Data Distribution and Robustness Checks

Figure A1. Distributions of Key Variables: Untransformed Variables Compared for Their Natural Log



Source: Data are from the 1998–2011 Statistics of US Businesses.

Figure A2. Distributions of Key Variables:
Untransformed Variables Compared for Their Natural Log



Source: Data on new hires are from the 1998–2011 Statistics of US Businesses. Data on regulation are from the 1998–2011 RegData database.

Table A1. Effect of Regulatory Index on Firm Births when Macroeconomic Controls Are Included

Variables	(1) All firms	(2) Small firms	(3) Large firms
lnRegulation	−0.0502***	−0.0425**	−0.0642
	(0.0182)	(0.0172)	(0.0478)
Time	−0.265***	−0.147**	0.139
	(0.0585)	(0.0662)	(0.182)
GDP growth	−0.0597***	−0.00659	−0.0757***
	(0.00961)	(0.00832)	(0.0270)
Productivity	0.0621***	0.0630***	0.0140
	(0.00940)	(0.00908)	(0.0309)
Interest rates 10-year treasuries	−0.0865**	−0.0859**	0.243**
	(0.0337)	(0.0417)	(0.107)
Unit labor costs	0.0331*	0.0260	−0.102*
	(0.0196)	(0.0229)	(0.0594)
GDP price index	−0.0345*	0.00119	−0.0262
	(0.0193)	(0.0202)	(0.0505)
Gross private domestic investment	−0.00126***	−0.00125***	−2.13e-05
	(0.000177)	(0.000171)	(0.000660)
Corporate profits	0.000999***	0.000600***	−0.000354
	(0.000163)	(0.000208)	(0.000525)
Unemployment	−0.0614	−0.179***	−0.0804
	(0.0376)	(0.0423)	(0.138)
Industrial production	0.0713***	0.0287***	0.0139
	(0.00833)	(0.00785)	(0.0254)
Constant	525.5***	293.6**	−267.3
	(114.6)	(129.7)	(356.4)
Observations	2,493	2,486	2,380
R^2	0.151	0.104	0.033
F-stat	34.99***	19.86***	5.539***

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors are in parentheses.

Table A2. Effect of Regulatory Index on Firm Deaths when Macroeconomic Controls Are Included

Variables	(1) All firms	(2) Small firms	(3) Large firms
lnRegulation	−0.0144	−0.000433	−0.0905*
	(0.0217)	(0.0216)	(0.0476)
Time	−0.0749	0.00702	−0.521***
	(0.0765)	(0.0699)	(0.162)
GDP growth	−0.0649***	−0.0421***	−0.0814***
	(0.00860)	(0.00928)	(0.0206)
Productivity	0.0302***	−0.0184**	0.157***
	(0.00968)	(0.00813)	(0.0246)
Interest rates 10-year treasuries	0.0439	0.0471	−0.0462
	(0.0423)	(0.0398)	(0.0957)
Unit labor costs	−0.0283	−0.0286	0.0696
	(0.0273)	(0.0219)	(0.0535)
GDP price index	−0.0653***	−0.0424**	−0.187***
	(0.0137)	(0.0171)	(0.0446)
Gross private domestic investment	−0.000243	0.000981***	−0.00131***
	(0.000188)	(0.000202)	(0.000494)
Corporate profits	6.81e-05	−0.000384**	0.000861*
	(0.000204)	(0.000175)	(0.000454)
Unemployment	0.0242	0.164***	0.0234
	(0.0509)	(0.0605)	(0.118)
Industrial production	0.0433***	0.00776	0.101***
	(0.00761)	(0.0104)	(0.0199)
Constant	152.9	−7.355	1,020***
	(149.8)	(136.8)	(316.8)
Observations	2,492	2,475	2,449
R^2	0.065	0.033	0.061
F-stat	14.74	10.97	14.16

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors are in parentheses.

Table A3. Effect of Regulatory Index on New Hires when Macroeconomic Controls Are Included

Variables	(1) All firms	(2) Small firms	(3) Large firms
lnRegulation	−0.0934***	−0.0534***	−0.0906
	(0.0319)	(0.0199)	(0.0566)
Time	−0.144	−0.0531	0.104
	(0.108)	(0.0966)	(0.253)
GDP growth	−0.0585***	−0.00558	−0.0315
	(0.0170)	(0.0117)	(0.0337)
Productivity	0.0855***	0.0301**	0.0439
	(0.0191)	(0.0126)	(0.0397)
Interest rates 10-year treasuries	0.0550	−0.0523	0.128
	(0.0605)	(0.0602)	(0.157)
Unit labor costs	−0.0260	0.000973	−0.0759
	(0.0350)	(0.0324)	(0.0855)
GDP price index	−0.0648**	0.0371	−0.0481
	(0.0291)	(0.0280)	(0.0652)
Gross private domestic investment	0.00138***	0.000720***	−0.000328
	(0.000359)	(0.000220)	(0.000800)
Corporate profits	0.000433	0.000252	−0.000439
	(0.000324)	(0.000286)	(0.000712)
Unemployment	−0.178**	−0.108**	−0.255
	(0.0842)	(0.0540)	(0.173)
Industrial production	0.0619***	0.0178	−0.00522
	(0.0150)	(0.0110)	(0.0307)
Constant	290.3	111.0	−192.6
	(210.7)	(189.2)	(495.8)
Observations	2,362	1,810	1,690
R^2	0.170	0.085	0.095
F-stat	29.10	12.47	10.31

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Note: Robust standard errors are in parentheses.

Response to Questions for the Record from Jared Meyer, Fellow, Economics21, Manhattan Institute

Questions submitted for the Record from Subcommittee Chairman Marino

1. At the hearing, you were asked about several successful technology startups that were founded by millennials. Do the examples of Facebook, Dropbox, and Airbnb indicate that youth entrepreneurship is not being harmed by overregulation?

While millennials have been the driving force behind many successful, transformative start-ups, it is important to not let the success of a few companies overshadow the problems seen throughout the rest of the economy.

Start-up rates remain low and less than four percent of private businesses are at least partially owned by someone under the age of 30—the lowest rate on record. Even though two-thirds of millennials want to work for themselves at some point, on a whole, members of this generation are not following through on their entrepreneurial dreams.

It is also not a coincidence that Silicon Valley technology firms are the shining point of the economy, especially when it comes to opportunities for millennials, and that this sector is among the least regulated. Applying the levels of regulation seen in the energy, manufacturing, and financial sectors to technology firms would substantially lower innovation and entrepreneurship. If millennials had to get an occupational license or a federal agency's approval to build a new smartphone app, there would likely be no Twitter, Snapchat, or Facebook.

2. At the hearing, you were asked about the effects that high student loan debt has on youth entrepreneurship. You agreed that this debt hinders millennials' desire to start businesses. How can we help to lower the burdens of student loan debt?

When 70 percent of college graduates are forced to take out an average of nearly $30,000 in student loan debt, something has to change. Everything from moving out of a parents' home, to buying a car, to starting a businesses are all made more difficult by high levels of student loan debt.

While policymakers realize that student loan debt is a major problem for both millennials and the economy as a whole, few proposed solutions address the reality that skyrocketing college tuition is driving the increase in student loan debt.

While many factors have contributed to college tuition increases that have exponentially outpaced inflation, the largest contributor is federal student loans. The government spends $169 billion a year on programs designed to make it easier for students to attend college, but its programs also have the unintended consequence of incentivizing colleges to raise tuition. The more federal student aid increases, the more colleges can increase their tuition, which then leads to more in federal student aid, and the vicious cycle continues.

Until something is done to slow the government-driven increase in tuition, any other student loan reforms are akin to putting a Band-Aid over the problem. Policymakers need to stop driving student loan debt levels higher before they attempt to address outstanding student loan debt.

For further information on the burdens of student loan debt and option for reform, please see my September 9, 2015 testimony before the House Budget Committee, "The Unprecedented Debt Burdens Facing Millennials."

Response to Questions for the Record form Patrick A. McLaughlin, Ph.D.
Senior Research Fellow, Mercatus Center at George Mason University

May 5, 2016

The Honorable Bob Goodlatte
United States Representative
Chair, House of Representatives Committee on the Judiciary
Washington, DC 20515

Dear Chairman Goodlatte:

Thank you for the opportunity to testify on February 24 at the hearing "Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages and Startups." I'm happy to provide answers to the post-hearing questions you posed in your letter of April 5.

1. At the hearing, Mr. Weissman said that a regulatory failure led to the great recession. Do you agree? What were the underlying causes of the financial collapse?

The financial collapse has been associated with several actions of the federal government, as well as firms and individuals in the private sector. Monetary policy, regulation of financial markets, and moral hazards arising from government policies interact in such a complicated way that it is easy to claim a specific cause and difficult to actually prove it.[1] However, we can say without a doubt that regulation did not prevent the financial collapse. I have previously documented that, contrary to popular myth, the volume of regulation issued by financial regulators increased by 17.9 percent from 1997 to 2008.[2] Others have used alternative measures of regulation and found similar results.[3]

Is it a regulatory failure when the volume of financial regulation increases but a financial collapse still occurs? Perhaps the better question is, "How could regulation have prevented the financial collapse?" In hindsight, many of those regulatory policies that were on the books leading up to the collapse also played a role in creating it. For example, many have pointed to the SEC's creation and treatment of nationally recognized statistical rating organizations (NRSROs) as part of the problem. A clear regulatory failure would occur if regulators simply assumed that more regulation or less regulation would be the "solution." Instead, regulators should objectively reexamine existing regulatory policies to ensure that the regulations are reducing risk, not—as a result of

[1] Kling examines the role and interactions of housing policy, capital regulation, monetary policy, industry structure, and innovation in the financial crisis of 2008. See Kling, Arnold. *Not What They Had in Mind: A History of Policies that Produced the Financial Crisis of 2008*. Mercatus Center at George Mason University, 2009. http://mercatus.org/publication/not-what-they-had-mind-history-policies-produced-financial-crisis-2008.
[2] McLaughlin, Patrick A. and Robert Greene. "Did Deregulation Cause the Financial Crisis? Examining a Common Justification for Dodd-Frank." Mercatus Center at George Mason University, 2013. http://mercatus.org/publication/did-deregulation-cause-financial-crisis-examining-common-justification-dodd-frank.
[3] See, for example, Calabria, Mark A. "Did Deregulation Cause the Financial Crisis?" Policy Report, Cato Institute, July/August 2009. http://www.cato.org/policy-report/julyaugust-2009/did-deregulation-cause-financial-crisis.

moral hazard or opportunistic behavior related to the design of regulations themselves—increasing risk.

2. Dr. Bivens, in his testimony, argued that fossil fuel job losses are more than offset by green energy job creation. But green jobs are the artificial creation of taxpayer subsidies. GAO reports the federal government alone has spent, at least, $150 billion on renewable energy projects. Dividing that Dr. Bivens' estimate of 115,000 solar jobs created and even adding the 79,000 wind and solar jobs identified by a celebrated 2015 Duke study, that's $773,195 per job! So isn't that argument misleading?

Government policies can force the reallocation of scarce resources, including labor, from one sector to another. Regulations, taxes, and subsidies all effectively take from some areas of the economy and give to other areas. Government intervention can create jobs temporarily, but the jobs will dissipate without sufficient market demand for the products those workers make. Furthermore, an intervention to force the exchange of resources from one sector to another or from taxpayers to a specific project is never frictionless.

While projections of employment growth in a specific sector often convey the impression of "gross employment growth, they obscure the broader implications for economic welfare by omitting any accounting of off-setting impacts."[4] These impacts include the obvious, such as the crowding out of the unsubsidized competitors, but also the more subtle, indirect impacts. For example, if a regulatory intervention causes the price of electricity to increase, downstream producers that use electricity as an input of production will have to adjust to the increases production costs, often leading to fewer jobs in those sectors. Price increases are also passed along to consumers, with the regressive effects detailed in the Chambers and Collins study I referenced in my testimony.[5]

In summary, it is an incomplete accounting of the employment effect of a regulation or a subsidy to only consider the effects of the specific sector that may benefit from the regulation because its products have become relatively less expensive (that is, its rivals' products have become more expensive). When the rivals' employment effects are considered, along with downstream effects from higher prices and the crowding out of investment, the net effect is quite different.[6] And none of that is even taking into account the effect of collecting $150 billion from taxpayers to pay for the subsidies mentioned in this question.

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[4] Frondel, Manuel, Nolan Ritter, Chistopher M. Schmidt, and Colin Vance. "Economic Impacts from the Promotion of Renewable Energy Technologies: The German Experience." *Energy Policy* 38, no. 8 (2010): 4048–4056. Quote from 4053.

[5] Chambers, Dustin and Courtney A. Collins. "How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation." Working Paper, Mercatus Center at George Mason University, 2016. http://mercatus.org/publication/how-do-federal-regulations-affect-consumer-prices-analysis-regressive-effects-regulation.

[6] A study by CBO director Keith Hall explains some of these and other labor effects of regulation. See: Hall, Keith. "The Employment Costs of Regulation." Working Paper, Mercatus Center at George Mason University, 2013. http://mercatus.org/publication/employment-costs-regulation.

3. Dr. Bivens, in his testimony, argued that private sector job growth shows that regulation is not harmful. But doesn't that ignore the quality of those jobs? The *New York Times* says that "the strongest employment growth during the sluggish recovery has been in low-wage work, at places like strip malls and fast-food restaurants. . . . In essence, the poor economy has replaced good jobs with bad ones." Isn't that a problem?

An economy is a reflection of the production of individuals and firms. Private sector job growth is a surrogate endpoint—it is a measure of activity within the economy, but it is not a measure of production of the economy. Whether that job growth is correlated with economic growth depends on what the individuals in those jobs produce. And in the long run, it also matters if the individuals in those jobs have opportunities to improve their skill sets, take on more responsibilities, and increase both their productivity and their incomes.

Unfortunately, policymakers often fail to consider the dynamic responses of firms and individuals. For example, while the recently proposed overtime pay rule from the Department of Labor may have been intended to encourage additional hiring and increase pay, economic theory and empirical evidence suggest that the responses of firms will not match the expectations of the Department of Labor. A recent study noted that by increasing the cost to firms by shifting salaried compensation to hourly compensation, employers will respond by reducing base pay, reducing overall compensation (by cutting fringe benefits or performance bonuses), or replacing some workers with machinery or a smaller number of higher-skilled workers.[7]

4. Dr. Bivens, in his testimony, wrote that, by 2020, EPA's Clean Power Rule will "have helped create 360,000 net new jobs." That sounds very high for a single rule. Can you cite a peer-reviewed, retrospective analysis offering a precedential case in which a single rule actually created that many jobs once implemented?

No, I am unaware of any peer-reviewed, retrospective analysis in which a single rule created that many jobs. In point of fact, most peer-reviewed studies of regulation tend to look at "regulatory programs" as an entire unit, rather than individual rules. For example, Walker (2010) examines the effect of the 1990 Clean Air Act amendments on labor outcomes like job growth and displacement (finding a 15 percent decline in employment in the regulated industries).[8] Greenstone (2002) similarly looks at the Clean Air Act, although it's a different set of amendments, and finds job losses induced by them to equal about 590,000—but again, this covers a large number of individual rules.[9] Morgenstern et al. (2002) examine environmental regulations that affect four different sectors (finding no statistically significant effect on employment).[10] One peer-reviewed study that I am familiar with that does examine the employment effects of a single rule is by Gray

[7] Boudreaux, Don, and Liya Palagashvili. "An Economic Analysis of Overtime Pay Regulations." Working Paper, Mercatus Center at George Mason University, 2016. http://mercatus.org/publication/economic-analysis-overtime-pay-regulations.

[8] Walker, W. Reed. "Environmental Regulation and Labor Reallocation: Evidence from the Clean Air Act." *American Economic Review* 101, no. 3 (2011).

[9] Greenstone, Michael. "The Impacts of Environmental Regulations on Industrial Activity: Evidence from the 1970 and 1977 Clean Air Act Amendments and the Census of Manufactures." *Journal of Political Economy* 110, no. 6 (2002): 1175–1219.

[10] Morgenstern, Richard, William A. Pizer, and Jhih-Shyang Shih. "Jobs Versus the Environment: An Industry-Level Perspective." *Journal of Environmental Economics and Management* 43, no. 3 (2002): 412–436.

et al. (2014).[11] They examined the Cluster Rule of 2001, finding small employment declines (around 3 to 7 percent) in the paper and pulp industry.

I hope this additional information is helpful in the committee's consideration of the impact of regulations on workers and households. Please feel free to contact me if I can provide any additional information.

Sincerely,

Patrick A. McLaughlin
Senior Research Fellow
Mercatus Center at George Mason University

[11] Gray, Wayne B., Ronald J. Shadbegian, Chunbei Wang, and Merve Meral. "Do EPA Regulations Affect Labor Demand? Evidence from the Pulp and Paper Industry." *Journal of Environmental Economics and Management* 68, no. 1 (2014).