To: Federal Policymakers

From: Neil Bradley
Executive Vice President,
Chief Policy Officer, and Head of Strategic Advocacy
U.S. Chamber of Commerce

Date: January 16, 2025

Subject: The Regulatory Environment and the U.S. Chamber of Commerce's Growth and Opportunity Imperative

The U.S. Chamber of Commerce's Growth and Opportunity Imperative establishes a goal of achieving at least 3% sustained annual economic growth. This level of growth is essential to expanding opportunities for American workers, raising wages, and improving standards of living. Key to achieving sustained 3%+ economic growth is growth-oriented public policy, including regulatory policy.

Regulations, when properly constructed, help implement the laws passed by Congress to improve our quality of life. Some level of government regulation is necessary to ensure public safety, protect the environment, and promote competitive and free markets.

Well-designed regulations provide greater clarity and certainty about how the law operates in practice and do so in a manner that maximizes innovation and choice while avoiding unduly prescriptive requirements and excessive costs.

When not properly constructed, regulations become a form of government micromanagement that eliminates the ability of regulated entities and the marketplace to do what people in free markets do best: innovate. This lack of innovation and the often excessive costs of government micromanagement hold back economic growth. The cost to the economy is compounded when the rules are constantly being changed. What is permissible or required in one moment may become prohibited or not required in the next. This uncertainty makes it difficult to plan and invest for the future.

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As a matter of practice, federal agencies have historically had significant leeway in how they write regulations, which means the general approach taken by an administration to regulations can matter in terms of ratcheting up or down the economic impact of the regulations they adopt.

Because government regulatory actions usually have at least some arguable basis in federal law, how Congress drafts law, including when it authorizes agencies to issue regulations and specifies the process they must follow, is also key to shaping the direction regulations take and their impact on the economy.

How Excessive Regulation Hurts the Economy

One way to think about the costs regulations impose on the economy is to sort them into various categories, such as indirect costs, direct costs and opportunity costs. Consider for example a new federal regulation that requires businesses to upgrade certain boiler systems to meet specific requirements that are considered more efficient and better for the environment. Here is how that specific regulation might impact the economy.

Indirect Costs

- Countless businesses must determine if this new regulation applies to them and if it does, if their existing boiler is out of compliance. This takes time that otherwise would have been spent running other aspects of the business and it may require the business to seek legal advice.
- The business must also determine if the regulation is likely to remain in effect. If it is being challenged in court or if a new administration might change the regulation, the business must assess the likelihood of when or if they will have to comply. This all takes time and effort.
- Regulators generally do a bad job of estimating these indirect costs.

Direct Costs

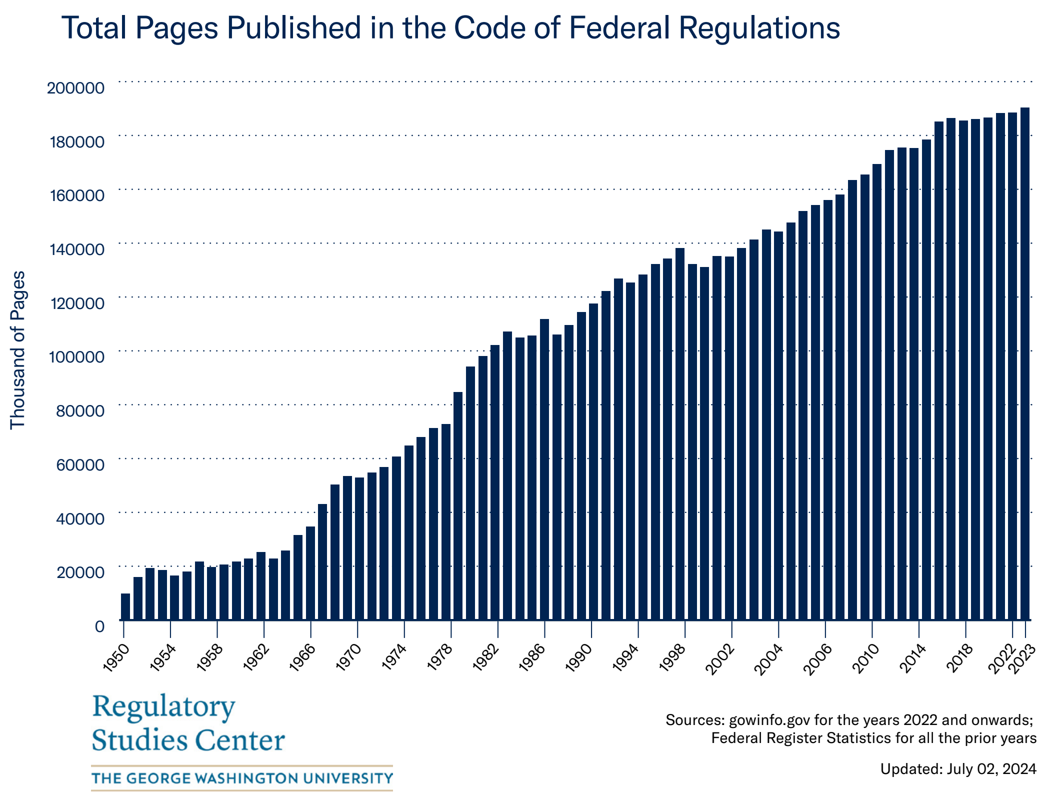
- If the regulation applies to a business, then they will have the direct cost of replacing the boiler.
- Regulators do a much better job of estimating these costs.

Opportunity Costs

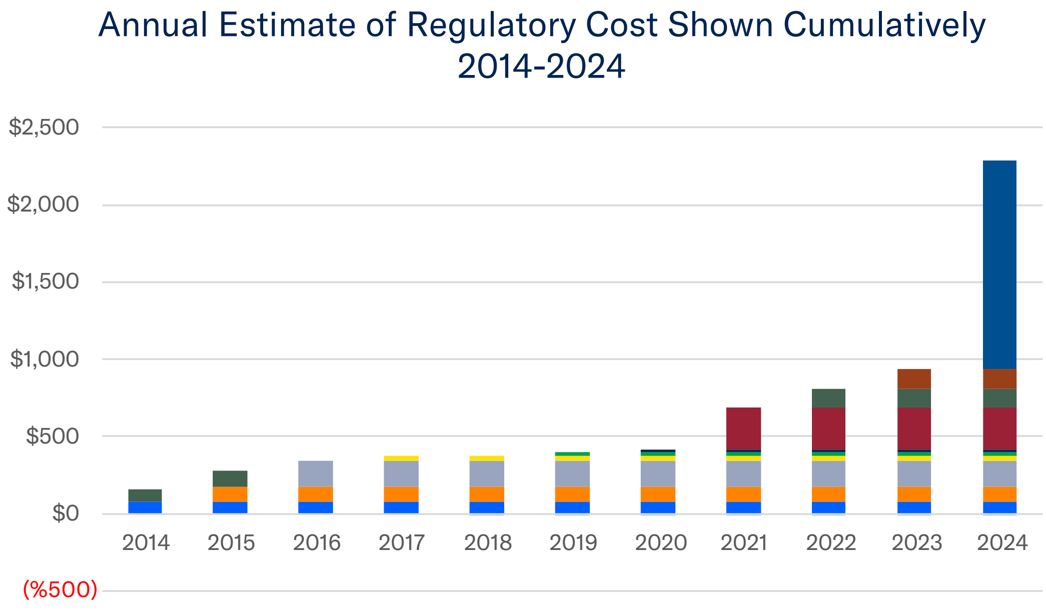
- The business that spent the money on the new boiler now doesn't have those funds to spend or invest elsewhere. It is possible the business would have used those funds to expand their operations, buy new equipment that would have made them more efficient or would have improved the safety of their operations, or hire additional employees. These forgone activities are opportunity costs.
- In some instances, there are opportunity costs on the innovation side as well. With the government now prescribing specific types of boilers, boilermakers may have less incentive to innovate new technologies that might ultimately be better, but that don't meet the specific requirements of the regulation.
- Regulators often fail to take into account these opportunity costs.

While there may be certain benefits from the wide-spread adoption of modernized boilers, those benefits have to be weighed against these cumulative costs. Well-designed regulations are written such that they minimize overall costs while seeking to achieve the goal of the underlying law. Multiply the boiler regulation in our example across thousands of different topics and you can begin to see the full cumulative weight of regulations on the economy.

The number of regulations business must track and comply with grows each year:



As does the cost:



The Regulatory Approaches of Different Administrations and the Recent Regulatory Tsunami

Deregulation has been a priority of past Democratic and Republican Administrations.

In the late 1970s, President Jimmy Carter recognized that excessive government regulation was not only holding back economic growth, but also contributing to higher inflation and robbing Americans of their freedom. The Carter administration, working with Congress, embarked on a massive deregulation of the airlines, trucking, railroads, energy and communications sectors. Carter issued executive orders and advocated for laws to improve the regulatory process. He even signed legislation getting the government out of the business of regulating homebrewing. As former Republican Senator Phil Gramm noted, "The Carter deregulation helped fuel the Reagan economic renaissance and continues to make possible the powerful innovations that remake our world."

President Reagan continued the deregulatory efforts by appointing a Task Force on Regulatory Relief headed by the Vice President to, among other things, identify past regulations in need of revision. Reagan also issued an Executive Order centralizing the review of proposed regulations in the White House's Office of Management and Budget (OMB) and requiring that benefits of proposed regulations exceed their cost.

Regulatory relief remained a priority when President Bill Clinton took office and was part of the mandate of the National Partnership for Reinventing Government. Led by the Vice President, the initiative resulted in "$28 billion a year in reduced regulatory burdens," the elimination of "16,000 pages of regulations," and a change in "the way [agencies] enforced regulations, to increase the use of partnership arrangements and reduce historical emphases on identifying procedural violations."

In his first term, President Trump made significant reforms to the regulatory process. Perhaps most notably he imposed a regulatory budget on the federal agencies that capped the amount of economic costs each executive agency's rules could impose on the economy. Since most agencies had caps with negative targets, that meant that any new rules had to reduce costs imposed by the government on the economy. The regulatory budget worked. The approximately 1,500 regulations with cost estimates issued in President Barack Obama's first term imposed cumulative costs of $492 billion. By contrast, the approximately 1,300 regulations with cost estimates imposed during the first Trump administration had cumulative costs of only $38 billion.

President Biden not only repealed the regulatory budget, he became the first president to raise the economically significant threshold for rules requiring a thorough economic analysis, doubling the threshold from $100 to $200 million in annual economic impact. It is little surprise that with the focus no longer on containing regulatory costs, costs exploded. In four years, the Biden administration issued approximately 1,200 regulations with cumulative costs in excess of $1.8 trillion.

TRACKING THE ADMINISTRATIONS

Regulatory Activity from Inauguration Day to July 26th (Year 4)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	982	$1.69T	308.9M
TRUMP 2017	1061	-$101.1B	199.9M
OBAMA 2009	1323	$308.5B	249.3M

Last Updated: July 26th, 2024 — AmericanActionForum.org

Recommendations for the Administration

Administrations should prioritize regulatory reform and lowering the costs regulations impose on the economy. Policies should include:

Regulatory Budgets

Require agency level regulatory "budgets" that cap the regulatory costs that can be imposed by new regulations. To reduce cumulative regulatory costs, most agency budgets should be negative, requiring agencies to make net reductions in the regulatory burden.

Outcome Based Focus

To avoid government micromanagement, agencies should be instructed to, where possible, adopt outcome-based approaches to regulation that state the desired outcome, but are not prescriptive as to how the outcome is achieved. This approach allows for greater private-sector innovation. To avoid setting unrealistic outcomes, agencies should be required to evaluate technological feasibility in reaching a specific outcome. This ensures realistic regulations while still preserving opportunities for innovation that reduce costs.

Retrospective Reviews

Agencies should be required, as part of their semi-annual regulatory agenda, to evaluate the effectiveness of existing regulations. Those that are failing to achieve their objections, are no longer necessary or have excessive costs should be revised or repealed. Agencies should invite the public to provide input on which existing regulations should be a priority for review.

Independent Agencies

Working with Congress as appropriate, the administration should impose the same kinds of regulatory requirements on independent agencies, including cost-benefit analyses, regulatory budgets, and retrospective reviews, that are currently required of traditional executive agencies.

Congress and the Regulatory State

Congress interacts with federal regulations in three key ways. First, Congress passes the laws that provide the underlying authority for agencies to issue regulations. Second, Congress establishes basic procedures that agencies must follow in issuing regulations. Third, Congress can review and disapprove of specific regulations.

Over the last 70 years, it is the two latter topics that have received the most attention from Congress.

In 1946, Congress passed the Administrative Procedure Act, which continues to govern the rulemaking process for most rules issued by agencies. This has been supplemented over time with requirements such as the Regulatory Flexibility Act, which requires that agencies consider the impact of regulations on small businesses, and the Paperwork Reduction Act, which focuses on reducing the burdens of federal record-keeping.

The 1996 Congressional Review Act created a fast-track process for Congress to overturn regulations that have been finalized by federal agencies. Some lawmakers have proposed going further and having Congress affirmatively approve major federal regulations before they can have the force and effect of law.

While historically receiving less attention, how Congress writes legislation directly impacts the authority agencies have to issue regulations.

Often legislation will include directives or explicit permission for agencies to issue regulations, providing for example “the Secretary shall prescribe regulations” or “the Administrator may issue regulations” to carry out a particular provision or set of provisions. These directives or permission can also prescribe the process, scope, and even the cost of any regulations issued under this authority.

In many cases. federal agencies also claim a general authority to issue regulations, from the enabling statute that created the agency or the laws that gave them certain responsibilities. As a result, even when a new law doesn’t explicitly provide for the issuance of regulations, agencies still sometimes claim broad organic authority to regulate.

When passing a new law, Congress can limit the regulatory authority agencies can exercise by prohibiting them from issuing new regulations, directing the process that agencies must follow if they issue a new regulation, or requiring that new regulations are limited in scope or cost.

Recommendations for Congress

Utilize the Congressional Review Act (CRA)

Congress should use the CRA to overturn costly or expansive newly-enacted regulations.

Reform the Regulatory Process by Statute

Congress should continue to pursue reform to regulatory process. This could include codifying a regulatory budget process, explicitly requiring independent agencies to follow processes similar to traditional executive agencies, and improving transparency and accountability through proposals like the Prove It Act that would reduce the federal red tape burden on small businesses.

Draft Legislation to Limit Regulatory Overreach

When drafting legislation, lawmakers should be precise as to whether or not they want agencies to issue new regulations. If legislation directs or authorizes an agency to issue regulations, the law should prescribe the scope of the regulations and whether and to what extent the regulation can impose new economic costs. As Congress passes new legislation, these requirements can prevent regulatory overreach and slowly reclaim authority from executive agencies.

Conclusion

As you begin the work of the new administration and Congress, the U.S. Chamber of Commerce urges you to prioritize policies that support the Growth and Opportunity Imperative for America. By updating the regulatory process, fostering innovation, and ensuring accountability, Congress can help achieve the goal of 3% annual economic growth.

We look forward to working with you to advance these critical priorities and ensure that America remains the best place in the world to do business.

Learn more about the Chamber's Growth and Opportunity Imperative for America.