Testimony

The “RAPID” Act; H.R. 712, The “Sunshine for Regulatory Decrees and Settlements Act of 2015;” and The “SCRUB Act”

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

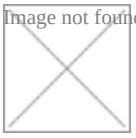
- Over time, as agencies issue an average of 75 major rules annually, regulatory accumulation will naturally result. Since 2008, regulators have added more than $107 billion in annual regulatory costs. This accumulation affects employment, consumers, and the broader economy.
- It is because regulatory reform has failed so often in the past that we continue to talk about its place in the future. Whether it’s the failure of agencies to comply with the Paperwork Reduction Act, the Congressional Review Act, or the current executive orders, it’s clear there are opportunities for meaningful reform that address cumulative burdens and the regulatory process.
- The proposed legislation could generate substantial regulatory savings. The American Action Forum (AAF) attempted to quantify savings from the SCRUB Act and the Sunshine for Regulatory Decrees and Settlements Act and found billions of dollars in possible benefits and 1.5 billion hours of less paperwork.

Let me provide additional detail on each in turn.

ASSESSING CUMULATIVE REGULATORY BURDENS

Decades of attempting to address the regulatory process and accumulation have generally failed to stem the growing influence of new federal rules. Currently, there are more than 70 federal agencies, employing more than 300,000 people who write and execute new regulations.[1] This costs taxpayers at least $60 billion annually. Compare that to the 42 full-time staffers who work at the Office of Information and Regulatory Affairs (OIRA).[2]

Perhaps the easiest way to display the gradual process of regulatory accumulation is to examine federal paperwork burdens over time. The following graph details the cabinet-level paperwork burden (in hours) from 1995 to 2015.

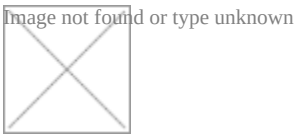


As the graph reveals, despite several executive orders on reform and legislative remedies designed to address

regulatory burdens, the growth in federal regulation remains unabated. From 6.4 billion hours of paperwork in 1995, the number of hours has expanded by more than 45 percent, to 9.3 billion today.

In the more recent history, AAF has tallied the costs, benefits, and paperwork burdens of every rule since 2008. To help the public keep track of all federal regulations, the American Action Forum will soon be launching a website that allows people to generate their own regulatory report based on the Federal Register.

Since 2008, regulators have finalized more than $107 billion in annual regulatory costs (approximately $700 billion in net present value). This is just a recent snapshot and cannot completely capture all cumulative burdens. The graph below displays new annual costs since 2008.



Beyond AAF's work, even the Government Accountability Office (GAO) has made a specific set of recommendations to address government duplication. In 2013, GAO released its annual report on federal "Fragmentation, Overlap, and Duplication."[3] The report found 17 areas of duplication, including renewable energy and veterans' employment. Based on these findings, researchers at AAF replicated GAO's methodology for overlap in paperwork requirements.

The spending equation of government duplication totals approximately $200 billion, according to former Senator Tom Coburn, but regulatory duplication also has a price.[4] Based on the 17 areas of duplication, AAF found 642 million paperwork hours, $46 billion in costs, and 990 forms of federal overlap. For example, ten different agencies are involved in renewable energy programs and produce 96 related forms.[5]

This duplication has real implications for Americans interacting with government. For example, EPA estimates its rule controlling mercury and other air toxics would increase energy prices by 3.1 percent. Because this increase was in line with natural variability in energy prices, the agency discounted this consumer burden. However, EPA also admitted its Cross-State Air Pollution Rule would raise energy prices by 1.7 percent. Again, in isolation, this is a minor fluctuation, but combined with the mercury rule, consumers now face a 4.8 percent increase.[6] Now, EPA estimates its Clean Power Plan would increase electricity prices by roughly six percent by 2020. If finalized, consumers could face a ten percent cumulative increase in prices during the next five years. [7]

This is just one example of regulatory accumulation from one agency. From more expensive vehicles, to pricier household goods, there are several areas where consumers ultimately bear the burden for each new rule, sometimes from different agencies. It's clear that regulatory accumulation is real and policymakers have few tools available today to measure it and effectively check its growth.

However, the "Regulatory Cut-Go" provision in SCRUB specifically addresses the accumulation of regulation. By ensuring a regulatory neutral approach to costs, the cut-go procedure could stem the tide of regulatory growth while still allowing agencies to fulfill their statutory objectives.

The idea of cut-go is similar to the United Kingdom's One-in, One-Out system for regulation, which has now been expanded to One-In, Two-Out (OITO). This system has saved the country more than $1.83 billion during the last six years.[8] The cut-go idea is also similar to a reform AAF has proposed, a paperwork budget that

would only apply to new collections of information.[9] The cut-go plan improves on both of these reforms because it is more comprehensive than a paperwork budget, and it provides agencies with more flexibility than the OITO system.

The hallmarks of retrospective review should be more than just cutting costs and burden hours. It is also important to study what regulations have worked well in the past and what rules could be improved. Using successful regulatory programs as a model for future regulation could reduce the likelihood that a new rule imposes unnecessary costs or leads to unintended consequences.

If the proposed commission is successful, it will identify a range of regulatory programs, and more than likely, a few rules that are duplicative and need to be amended. As then-Administrator Cass Sunstein noted, retrospective review should also focus on "modernizing rules" and consider "the combined effect of their regulations."[10]

FAILURE OF PAST REGULATORY REFORM

The calls for regulatory reform might grow old to some familiar with political and policy dialogue. There have been multiple attempts to address regulatory duplication and the regulatory process. Through the Paperwork Reduction Act (PRA), the Congressional Review Act (CRA), or the half-a-dozen executive orders promoting reform, agencies nevertheless routinely ignore or violate these measures.

For example, every year OIRA publishes its Information Collection Budget of the U.S. Last year, OIRA reported 282 violations of the PRA; the Department of Health and Human Services (HHS) committed 80 violations.[11] Any agency that violates the law more than 25 times receives a "Poor" rating from OIRA. HHS has received a "Poor" rating every year since FY 2009. Furthermore, OIRA included no specific discussion of HHS in its section on "Steps to Improve Agency Compliance."

Violations of the PRA are hardly a recent concern. When it was initially passed, OIRA set a government-wide goal for reducing paperwork burdens by 10 percent in FYs 1996 and 1997, with a five percent target during the next four fiscal years.[12] As the graph on cabinet-level burdens reveals, agencies did not come close to meeting those metrics. Instead of a 35 percent reduction of 4.6 billion hours, agencies increased burdens by 17 percent.

Likewise, agencies routinely fail to follow the CRA. In a recent report from the Administrative Conference of the United States, Curtis Copeland found 43 major and significant rules that were never submitted to Congress or the Government Accountability Office, as the CRA requires.[13] In fact, the report found in 2012, "[F]ederal agencies published a total of 3,714 final rules in the *Federal Register*, but the GAO database indicates that only 2,660 of those rules were submitted (71.6%)." A grade of "D" should not be the standard for agencies complying with the law. Regulators expect 100 percent compliance from the companies they regulate and taxpayers should expect 100 percent compliance from their regulatory agencies following the law.

Compliance with reform also fails with respect to executive orders. When President Obama issued Executive Order 13,563, he embraced the ideal that the nation's regulatory system should "protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."[14] There have been successful strides under EO 13,563 to remove redundant regulations and cut costs, but they are often in fits and starts, without a true "culture of retrospective review."[15]

There have been notable rulemakings that examined past regulations and reduced costs while still protecting public health. For example, the Department of Transportation (DOT) finalized a rule to drastically reduce the

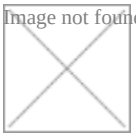
amount of paperwork truck drivers file under “Driver-Vehicle Inspection Reports.”[16] By only requiring reports after an incident, as opposed to a routine trip, DOT plans to save the industry more than $1.7 billion annually and reduce 46.6 million paperwork burden hours, or roughly 15 percent of DOT’s total burden.

However, there are only a handful of these notable rules, and they are dwarfed by the 3,000 other rules regulators issue annually. Examining the most recent retrospective review reports from the administration reveals that many agencies treat these reports as just another Unified Agenda. Many of the rules fail to look back at past regulatory programs. Instead, they implement parts of the Affordable Care Act (ACA) or other recent legislation. It is no surprise the administration is implementing the ACA, but it should not label these new regulations as “retrospective.”

The Department of Energy (DOE) is a main culprit in this exercise. In one of its recent retrospective review updates, DOE included 19 “retrospective” rulemakings; six of these are new energy efficiency measures that increase costs. They do not examine previous regulations and they do not address redundancy. Combined, DOE’s retrospective report adds more than $17.7 billion in cumulative costs and 60,200 paperwork burden hours. The agency failed to quantify a single measure that would reduce costs.

The Department of Education also manipulates its retrospective reports by including new measures that don’t look back at existing regulations. Instead, the agency’s report included the controversial “Gainful Employment” rule that adds $433 million in annual costs and 6.9 million paperwork burden hours.[17] In addition, the rule projects that more than 110,000 students would drop out of secondary education because of the regulation.

The chart below displays the steady growth of Education paperwork since 2005. The agency’s paperwork burden has more than doubled. Not surprisingly, general administrative staff at postsecondary institutions grew 31.5 percent in the last decade, with a 32.8 percent increase in compliance officer employment.[18] A recent bipartisan Senate report on the regulation of postsecondary institutions found, “[A]pproximately 11 percent, or $150 million, of Vanderbilt’s 2013 expenditures were devoted to compliance with federal mandates.”[19] Through two administrations, each with similar executive orders on regulatory reform, neither has been able to slow the steady rise of new requirements.



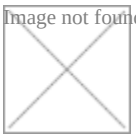
Fundamental reform that thoroughly examines the cumulative stock of regulations while providing flexibility to agencies is vital to ensuring continued economic success. Both of the proposed bills today will take important steps toward reforming the rulemaking process and addressing regulatory accumulation.

BENEFITS OF REFORM LEGISLATION

There are obvious benefits to codifying retrospective review and increasing transparency in the sue and settle environment. The first windfall is permanency. Executive orders are temporary and could easily wither with new administrations. However, a commission designed to evaluate cumulative regulatory burdens would have the backing of strong legislation that could last beyond just a single administration, regardless of political party. With the start of every administration, there are campaigns to abolish the internationally recognized concept of cost-benefit analysis, but these reform bills would add needed permanency to the regulatory process.

Second, there are significant regulatory cost and paperwork savings that could be achieved if the legislation works as intended. For example, the SCRUB Act sets a goal "to achieve a reduction of at least 15 percent in the cumulative costs of federal regulation." There are two ways to quantify this 15 percent goal. First, we can look broadly at cumulative regulatory burdens, as represented in paperwork. Currently, the federal government imposes 9.9 billion hours of paperwork.[20] Assuming the independent commission that SCRUB establishes reaches its goal, Americans could expect to save almost 1.5 billion hours of time.

The graph below displays the last ten years of cabinet-level paperwork burdens and what a 15 percent reduction would look like historically. During the ten-year period, 15 percent annual reductions would have saved 13 billion hours cumulatively.



The magnitude of 13 billion hours cannot be overstated. For perspective, the entire U.S. Individual Income Tax generates 2.6 billion hours of paperwork annually. If we were to quantify the savings, there are two main metrics: the hourly cost of a regulatory compliance officer ($32.10) and Gross Domestic Product (GDP) per hour worked ($60.59 in 2011 dollars). Assuming the compliance officer figure, 1.5 billion hours translates to $48.1 billion in regulatory savings. That figure is larger than the GDP of Paraguay. Assuming GDP per hour worked, this figure yields more than $90.8 billion in possible savings.

The second method for quantifying SCRUB savings derives from a more recent sample of regulation. Based on AAF's regulatory data since 2008, the average annual cost of regulation during that time is $15 billion. If SCRUB achieves its savings goal, Americans can expect $2.25 billion in annual savings. That might seem like a small figure, but if we assume those cost reductions remain constant during the next ten years, savings could eclipse $22 billion.

These figures are meant to be illustrative, not definitive. Much of the ultimate savings depends on the work of the commission and their staff. Regardless of the estimate, the ranges presented here represent a tremendous opportunity to eliminate redundant regulations and save American consumers from higher costs.

For sue and settle reform, there is a clear record of rules with a judicial deadline that OIRA approved in recent years. According to AAF research, there have been 25 "economically significant" regulations with a judicial deadline from January 2009 to January 2015, but only 21 monetized costs or benefits. Combined, these rules generated $23.9 billion in annual costs and 5.7 million paperwork burdens hours. For perspective, there were 19 significant final rules with a judicial deadline during a similar period (2004 to 2009) from the last administration.

If the Sunshine for Regulatory Decrees and Settlements Act is adopted, it wouldn't necessarily wipe away the costs and benefits of past regulation, but the figures above do highlight the impact of these rulemakings, which

extend beyond just EPA measures. A recent GAO report noted the somewhat limited nature of sue and settle lawsuits, but the report itself was limited, focusing only on EPA.[21] Seven of the rules in our sample were from DOE and one was from DOT. These eight rules had a combined annual burden of $3.4 billion, yet GAO did not cover these figures in its report.

Furthermore, the report did note that more than a quarter of all major EPA rules were prompted by special interest lawsuits, hardly a trivial figure. We should not be surprised that the issue of sue and settle is increasing in importance because EPA admits that it has not complied with 57 risk and technology reviews, as required by federal law. Increasing additional transparency in the process could allow for greater public participation and an identification of the significant economic burdens outlined here.

In sum, the proposed legislation addresses cumulative regulatory burdens without significantly constraining the current work of agencies. The independent commission would provide a legislative solution to regulatory accumulation and sue and settle reform could increase transparency into a process that many view as opaque.

CONCLUSION

In 2011, President Obama pledged to "remove outdated regulations that stifle job creation and make our economy less competitive."[22] He conceded that past reform attempts didn't deliver on promised benefits and that regulation can harm economic growth. Today, we should strive to codify a system that remedies regulatory accumulation and increases transparency. Successful reform could save billions of dollars in costs and 1.5 billion paperwork hours.

Thank you. I look forward to answering your questions.

[1] Susan Dudley and Melinda Warren, "2015 Regulators' Budget: Economic Forms of Regulation on the Rise," available at http://regulatorystudies.columbian.gwu.edu/node/224.