



Confronting Regulatory ACCUMULATION

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A politically viable approach
to regulatory reform

Regulatory accumulation is both a process and an outcome of our reactive regulatory structure. Over time, regulations naturally accumulate and layer on top of existing rules, resulting in a maze of duplicative and outdated rules companies must comply with. However, our current regulatory system has no effective process for addressing regulatory accumulation.

To address this, we propose the creation of an independent Regulatory Improvement Commission (RIC) to be authorized by Congress on an ongoing basis. The RIC will review regulations as submitted by the public and present a recommendation to Congress for an up or down vote. It will have a simple, streamlined process and be completely transparent. Most importantly, it will review regulations en masse in a way that is politically viable.

Regulatory Approval Process

The current approval process for all new federal regulations is governed by Executive Order 12866, which dates back to 1993. It requires rulemaking agencies to assess proposed regulations, directing agencies to “assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.”

This cost-benefit analysis is perhaps the most important part of the approval process. It is where the rulemaking agency estimates the rule’s potential cost and expected benefits. It is so influential to the decision process that in 2005, the Office of Information and Regulatory Analysis (OIRA), housed



in the Office of the President, issued specific guidance for how to conduct these assessments for proposed rules where the estimated annual economic impact was \$100 million or more.

In order for the new rule to be approved, the cost-benefit or comparable regulatory analysis must show that the benefit outweighs the cost—there must be a “net benefit.” Benefits can be social or economic, so that, for example, the regulation will result in less air pollution or enhance consumer safety. Costs can be in terms of business compliance, for example, the time and resources spent on items like enhanced reporting, data collection, monitoring and inspections.

Only after a review of the findings in the cost-benefit analyses and public comments received following a notice in the Federal Register will a final determination be made on whether to approve the new rule. For rules deemed “economically significant,” or those

with an estimated economic impact of over \$100 million annually, OIRA makes the final decision. In all other cases, the proposing agency makes the final determination. All told, the current rulemaking process consists of up to nine steps, and economically significant rules include two comprehensive OIRA reviews.

The integral role of the cost-benefit analysis in the regulatory approval process is generally accepted by both Democrats and Republicans. These analyses are seen as an objective tool to determine reasonably if a net benefit to society from the regulation exists. So, if the analysis has a net benefit, there is reasonable justification for approving and imposing the new regulation.

The Cost of Regulatory Accumulation

Our current regulatory approval process is focused on individual regulations. But regulations are hardly ever applied individually as a discrete entity—once approved, they are added to the list of regulations companies must already comply with.

As the number of approved regulations grows, they inevitably interact in ways we may not expect. And when taken together, multiple regulations can overlap or conflict, become the primary focus of company management, or even interfere with a company’s willingness and ability to innovate. One could only imagine how complying with all of the various regulations together could have an impact on the efficiency of operations, organizational structure, or a company’s bottom line.

Our regulatory process is not designed to systematically review or remove regulations that become redundant, unnecessary, or outdated.

New regulations simply accumulate on top of old ones. In 2011, there were 169,301 pages in the Federal Code of Regulations, an increase of almost 4,000 from just a year earlier. The number of pages increased 22 percent since 2000, and by 138 percent since 1975 when the total number of pages was 71,224. That’s an extraordinary number of pages for a typical business to have to be aware of and comply with.

Regulatory accumulation is an inevitable outcome of reactive regulations. The political system, understandably, reacts to major events—new technologies, corporate accounting scandals, environmental discoveries, or reports of tainted food or faulty products. The Sarbanes-Oxley Act and the Dodd-Frank Act are two very famous examples of reactive regulation, stemming from exogenous shocks to the financial system. These new rules are on top of existing reporting, accounting, and underwriting requirements.

The problem with regulatory accumulation is that it imposes an unintended, unobserved, and underappreciated economic cost. As we wrote in a 2011 paper, “an accumulation of regulations can sometimes create problems even if every regulation, taken individually, is defensible. Waves of new regulations, without elimination or rationalization of old ones, end up closing off options and raising costs.”

Companies must spend money to keep up and comply with all of the rules simultaneously, old and new. Having to balance many rules together will cost more than complying with each rule separately.

For each new regulation added to the existing pile, there is a greater possibility for interaction, inefficient company resource allocation and

reduced ability to invest in innovation. The negative effect on U.S. industry of regulatory accumulation actually compounds on itself for every additional regulation added to the pile.

Regulatory Accumulation and Cost-Benefit Analysis

Cost-benefit analyses are a valuable tool in understanding the societal impact of individual regulations. But what if we wanted to assess the net benefit of two regulations, 10 regulations, or many regulations implemented together?

Cost-benefit analyses do not consider the cost of regulatory accumulation. The current procedure for assessing the cumulative benefit of multiple regulations is to simply add up the costs and benefits of the individual pieces. That's how OIRA assesses the cumulative benefit of the regulations it approves. Their draft 2012 report to Congress on the benefits and costs of regulations finds: "The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2001, to September 30, 2011, for which agencies estimated and monetized both benefits and costs, are in the aggregate between \$141 billion and \$700 billion, while the estimated annual costs are in the aggregate between \$43.3 billion and \$67.3 billion."

The implication here is that aggregating individual regulations linearly is an adequate and reasonable way to understand the societal impact of a group of regulations. But because of regulatory accumulation, regulations grouped together do not act so linearly.

Any one regulation can have a net benefit to society, as determined by a cost-benefit analysis or comparable agency assessment. But when combined with the existing array of regulations, the aggregate net benefit to society will be less than if we simply added individual costs and benefits and subtracted. For example, suppose the estimated cost of two regulations, A and B, were each \$10 million. Current practice implies the aggregate cost of A and B is \$20 million. But suppose the interaction cost—the additional cost of regulatory accumulation—between A and B was \$10 million. Then the aggregate cost of A and B is actually \$30 million—\$10 million higher than the estimate current analyses use to determine the net benefit of multiple regulations.

That means it is neither accurate nor reasonable to represent the net societal benefit of multiple regulations in the traditional linear way. The costs in aggregate will be automatically higher because of regulatory accumulation. The net benefit to society will automatically be less.

Addressing Regulatory Accumulation

Although regulatory accumulation clearly imposes a significant cost to business and to the broader economy, there are currently no processes in place that effectively reduce the number of regulations that are outdated or no longer cost-effective. There are many reasons for this, but it all comes down to how retrospective regulatory review has been traditionally approached—as self-reviews by the very agencies that originated the regulation.

Traditionally, retrospective regulatory review assesses regulations one at a time. In fact, this is the approach that has been taken by every Presidential administration since President Carter. However, multiple studies on the subject show the results have been limited at best.

We argue instead the most effective approach to address regulatory accumulation is to retrospectively review, improve, and/or remove multiple regulations, as a complement to the current practice of agency self-review. This approach to regulatory reform makes the most sense when thinking about regulatory accumulation as the result of too many "pebbles in the steam." To clear away the dam it makes more sense to take a handful of pebbles rather than pick one pebble up at a time.

Benefits of an Independent Commission

As previously mentioned, our proposal to address regulatory accumulation calls for the establishment of a Regulatory Improvement Commission (RIC). The RIC would be an independent, Congressionally-authorized body that would review existing regulations as submitted by the public. Previously proposed by Progressive Policy Institute in a 2011 paper, the RIC



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would be modeled after the successful Defense Base Closure and Realignment Commission. The commission would consist of eight members appointed by the President and Congress who, after a formal regulatory review, would submit a list of 15-20 regulatory changes to Congress for an up or down vote. Congressional approval would be required for the changes to take effect, but Congress would only be able to vote on the package as a whole without making any adjustments.

The public would be active participants in the regulatory improvement process. The regulations considered by the RIC would be suggested by the public during an open comment period, and the review process used by the commission would be made publicly available. Such engagement will promote impartiality while building trust in the RIC's ability to effectively meet the stated objectives.

The RIC must be re-authorized each time Congress would like to repeat this process. Such continued re-authorization is important, as such a requirement avoids the creation of a new government bureaucracy. Continued reauthorization allows the RIC to build trust across both political parties, and reduces the potential for political gaming or perceived bias in any of the commission's recommendations.

A major benefit of the RIC is that it would eliminate the cost burdens and the lack of impartiality associated with agency self-review. An independent commission is the best way to ensure there is no hidden regulatory agenda, and it has the flexibility to review regulations across many agencies. Further, there would be no repercussion from judging a regulation to be no longer cost-effective. The RIC would have no one to answer to since after the review it is disbanded. The RIC also has the benefit of addressing several regulations at once. Perhaps the most important feature of the RIC is that it is politically feasible. It is simple to

“Regulatory accumulation is an inevitable outcome of reactive regulations.”

understand and has fewer moving parts, making it streamlined to implement and giving less room for political maneuvering. It does not create a new federal agency, nor does it require a minimum cost reduction. And by looking at individual regulations instead of legislation, there is less potential for political controversy among those who value the legislation's intended purpose.

Why RIC is Politically Viable

The RIC is the most politically viable approach to effectively addressing the cost of regulatory accumulation, because it bridges the gap between Democrats and Republicans. The ability of Congress to have a final vote on the package of regulatory changes keeps any reform within Congressional control. Since the RIC is dissolved after each iteration, there is no threat of major wholesale deregulation. And because there is no arbitrary requirement to recommend a certain amount of regulatory eliminations, there can be no claims of a preconceived bias.

Moreover, we argue that the RIC is the most politically viable option in creating a fruitful process to retrospectively reviewing regulations. It bridges the gap between how Democrats and Republicans approach the subject of regulatory reform, and has the potential to build trust in a process that reviews regulations en masse. Finally, the RIC could have applications for state and local governments upon proven success. The economic costs of regulatory accumulation are not limited to federal codes and statutes. States and local authorities may use the RIC as a model for addressing regulatory accumulation in their own jurisdictions.

Regulatory accumulation imposes an unintended but significant economic cost to businesses and on the economy. This is true even if the underlying regulations have a net benefit to society. To implement a successful high-growth, high-innovation strategy, the burden of regulatory accumulation must be addressed. And this must be done in a way that strikes the right balance between encouraging innovation and protecting the environment and consumers. 🌱

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