

The scope and reach of regulation is growing, and along with it, public concern that there may be too much regulation of private activity. (See [annual Gallup poll](#) showing that more respondents are concerned about too much regulation than too little.)

In response to this concern, President Obama issued two executive orders directing agencies

[“to determine whether ...existing significant ...regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”](#) The President [noted](#), “during challenging economic times ...it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.”

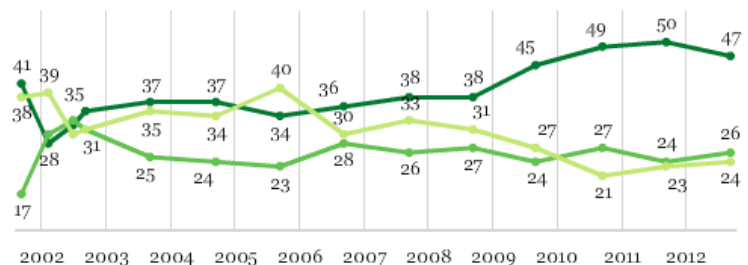
The President’s regulatory look back initiative continues efforts of previous presidents. In 1978, President Carter directed agencies to [“periodically review their existing regulations to determine whether they are achieving ... policy goals.”](#) President Reagan called on agencies to [“perform Regulatory Impact Analyses of currently effective major rules”](#) and President Clinton’s [Executive Order 12866](#), which remains in effect today, tells each agency to “periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency’s regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President’s priorities and ... principles.”

Congress has also legislated retrospective review of regulations. [The Regulatory Flexibility Act of 1980](#) requires agencies to review rules with significant economic impacts on small entities every 10 years. The [Regulatory Right to Know Act](#) called on the Office of Management and Budget to report annually on benefits and costs of regulation and on [recommendations for reform](#).

*In general, do you think there is too much, too little, or about the right amount of government regulation of business and industry?*

Trend since 2001

■ % Too much ■ % Too little ■ % Right amount



GALLUP



Despite these efforts, however, ex post review of regulations tends to take a back seat to ex ante analysis of regulations before they are issued, and the [Code of Federal Regulations](#) continues to grow.

Ex ante regulatory impact analysis has a long tradition in the United States and elsewhere, with [established analytical steps](#) and [oversight](#) by the Office of Management and Budget as well as public comment to hold executive branch agencies accountable for conducting analysis before regulations are issued. But ex ante analyses necessarily depend on unverifiable assumptions and models, and are thus *hypotheses* of the effects of regulatory actions.

Better retrospective review would allow us to test those hypotheses against actual outcomes,

but it too poses challenges. Once a regulation is in place, it's not always obvious what the world would have looked like without it. (For example, would air emissions have continued to increase directly with economic and population growth, or would technological change and citizen preferences have constrained that growth?) Measuring opportunity costs (what activities or innovations were foregone to achieve regulatory goals?) is not easy, and measuring benefits is often harder. (EPA, in its Clean Air Act retrospective analysis, relied on the same ex ante models to estimate ex post benefits, rather than measuring observed outcomes.) While ex post evaluation has a long tradition in other areas, particularly in programs financed through the fiscal budget, it has received little attention (and even fewer resources) in the regulatory arena, despite legislation and executive orders spanning the last 35 years.

For retrospective review of regulations to be successful, we need better tools for ex post analysis, and better incentives for conducting it. Agencies should plan for retrospective review at the outset, establishing a framework for empirical testing of assumptions and hypothesized outcomes. Shifting resources from ex ante analysis to ex post review would not only help with evaluation, but would improve our ex ante hypotheses of regulatory effects. Retrospective review should not be left exclusively to regulatory agencies, who have little incentive to find fault with their regulations, but should be subject to third-party evaluation. And, mechanisms such as sunset provisions, or offsets (as in the United Kingdom's ["one-in-one-out" policy](#)) could provide incentives for objective evaluation of regulations' effects.

Without better tools and incentives, the current retrospective review initiative, like those that have preceded it, is unlikely to achieve more than superficial results.

