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Can Fiscal Budget Concepts Improve Regulation?

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ABSTRACT

Despite efforts to ensure that new regulations provide net benefits to citizens, the accumulation of regulations threatens economic growth and well-being. As a result, the U.S. legislature is exploring the possibility that applying fiscal budgeting concepts to regulation could bring more accountability and transparency to the regulatory process. This paper examines the advantages and challenges of applying regulatory budgeting practices, and draws some preliminary conclusions based on successful experiences in other countries.

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Can Fiscal Budget Concepts Improve Regulation?

Despite efforts to ensure that new regulations provide net benefits to citizens, the accumulation of regulations threatens economic growth and well-being.² As a result, the U.S. legislature is exploring the possibility that applying fiscal budgeting concepts to regulation could bring more accountability and transparency to the regulatory process.³ This paper examines the advantages and challenges of applying regulatory budgeting practices, and draws some preliminary conclusions based on successful experiences in other countries.

As an OECD paper observes, “while governments are required to account in detail for their fiscal spending, regulatory costs or ‘expenditures’ are still largely hidden and there is still no accountability for the total amount of regulatory expenditure which a government requires.”⁴

Taxes, and subsequent spending, are one way the federal government redirects resources from the private sector to accomplish public goals. Regulation of private entities—businesses, workers, and consumers—is another. Like the programs supported by taxes, regulations provide benefits to Americans. However, the costs associated with regulatory programs are not subject to the same checks and balances.

Because regulatory costs are less visible (regulations have been called a “hidden tax”⁵) and they are assumed to be borne by businesses (even though individual consumers and workers ultimately bear them), regulatory tools may seem preferable to direct spending programs for accomplishing policy objectives. Without a more transparent accounting of regulatory costs, efforts to constrain their growth will be hampered.

Other countries are applying budgeting tools to improve regulatory transparency and accountability, and impose some constraint on growing regulatory burdens. Notably, the Netherlands, the United Kingdom, and Canada have adopted requirements to offset the costs of new regulations by removing or modifying existing rules of comparable or greater effect. This paper explores how such a practice might work in the U.S.

² Michael Mandel and Diana G. Carew. *Regulatory Improvement Commission: A Politically-Viable Approach to U.S. Regulatory Reform*, Progressive Policy Institute Policy Memo, May 2013.

³ On June 23, 2015, the U.S. Senate Committee on the Budget and Committee on Homeland Security and Governmental Affairs held a joint hearing on “Accounting for the True Cost of Regulation: Exploring the Possibility of a Regulatory Budget,” <http://www.budget.senate.gov/republican/public/index.cfm/hearing-schedule?ID=ccc69281-d86e-4f7c-aa17-d0a49c510893>.

⁴ Nick Malyshev, *A Primer on Regulatory Budgets*, OECD Journal on Budgeting, 2010/3.

⁵ Wendy L. Gramm, *Regulatory Review Issues, October 1985–February 1988*, 63 *Administrative Law Review*, 2011.

U.S. Regulatory Practices

Though reliable estimates of regulatory costs are lacking, proxy measures, such as those presented in the attached Figures 1 – 5, suggest that the scope and reach of regulation in the U.S. has been growing.⁶ In 2015, there are over 70 federal agencies, employing almost 300,000 people to write and implement regulation.⁷ Every year, they issue thousands of new regulations, which now occupy over 175,000 pages of regulatory code.⁸

In the U.S., individual regulations are constrained by 1) their enabling legislation, 2) the Administrative Procedure Act,⁹ which requires agencies to provide public notice and seek comment before issuing new regulations, and 3) executive requirements for regulatory impact analysis. Presidents of both parties for more than 40 years have supported ex ante impact analysis of regulations as a way to make agencies weigh the likely positive and negative consequences of regulations before they are issued.¹⁰

Executive Order 12866,¹¹ issued by President Bill Clinton in 1993, continues to guide the development and review of regulations today (having been reinforced by both Presidents George W. Bush and Barack Obama). E.O. 12866 expresses the philosophy that regulations should (1) address a “compelling public need, such as material failures of private markets”; (2) be based on an assessment of “all costs and benefits of available regulatory alternatives, including the alternative of not regulating”; and (3) “maximize net benefits” to society unless otherwise constrained by law.¹²

⁶ The GW Regulatory Studies Center’s “Reg Stats” page provides various measures of regulatory activity, <http://regulatorystudies.columbian.gwu.edu/reg-stats>.

⁷ Susan Dudley & Melinda Warren, *Regulators’ Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016*, The George Washington University Regulatory Studies Center and the Weidenbaum Center on the Economy, Government, and Public Policy, 2015, <http://regulatorystudies.columbian.gwu.edu/2016-regulators-budget-increases-consistent-growth-fiscal-budget>.

Note that “agencies that primarily perform taxation, entitlement, procurement, subsidy, and credit functions are excluded from this report,” so these figures exclude staff developing and administering regulations in the Internal Revenue Service, the Centers for Medicaid and Medicare Services, etc.

⁸ Office of the Federal Register, *Code of Federal Regulations, Page Breakdown- 1975 through 2014*, 2015, <https://www.federalregister.gov/learn/tutorials>.

⁹ Administrative Procedure Act of 1946 (5 U.S.C. Subchapter II), <http://www.archives.gov/federal-register/laws/administrative-procedure/>.

¹⁰ Susan E. Dudley, *Improving Regulatory Accountability: Lessons from the Past and Prospects for the Future*, Case Western Reserve Law Review, Vol. 65 Issue 4- 1050, 2015, <http://law.case.edu/journals/LawReview/Documents/Dudley.pdf>.

¹¹ Exec. Order No. 12866. *Regulatory Planning and Review*, Federal Register, Vo. 58, No. 190, 1993, http://www.whitehouse.gov/sites/default/files/omb/info/foreg/eo12866/eo12866_10041993.pdf.

¹² Exec. Order No 12866, Sec. 1(a).

The Paperwork Reduction Act of 1980 complements these procedural and analytical regulatory requirements.¹³ Designed to reduce the administrative burden the federal government imposes on private businesses and citizens, it required agencies to receive approval from the Office of Management and Budget (OMB) before collecting new information from the public. As the central clearinghouse for all collections of information, OMB produces an annual “Information Collection Budget” (ICB) report to Congress. The 2014 ICB estimates that the public spent 9.45 billion hours responding to federal information collections, “a net decrease of 14 million burden hours, or less than one percent, from the estimated 9.47 billion hours that the public spent responding to federal information collections in FY 2012.”¹⁴

Though called a “budget,” the ICB is reported in hours, rather than dollars, and there are no consequences for increasing regulatory burdens nor are there incentives to offset new requirements by removing existing burdens. The main mechanism for constraining growth in burdens is the centralized review and approval by OMB.¹⁵ While not an explicit benefit-cost balancing statute, the PRA’s goal is to “ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.”¹⁶

These legislative and executive practices and policies are largely aimed at new regulations, though E.O. 12866 and subsequent executive orders encourage agencies to evaluate existing regulations. President Obama’s E.O. 13563 asks agencies to develop and submit to OIRA plans “under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed...”¹⁷ E.O. 13610 directs agencies to prioritize “initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens.”¹⁸ OMB guidance advises agencies that impose high paperwork burdens to “attempt to identify at least one

¹³ Public Law No. 96-511, *Paperwork Reduction Act of 1980*, 94 Stat. 2812, codified at 44 U.S.C. §§ 3501–3521, <http://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg2812.pdf>.

¹⁴ Office of Management and Budget, *Information Collection Budget of the United States Government* 2014, https://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb_2014.pdf.

¹⁵ OMB must not only approve any new information collection, but must reapprove all collections at least every three years.

¹⁶ Office of Information and Regulatory Affairs, *Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Subject: Information Collection under the Paperwork Reduction Act*, 2010, citing 44 U.S.C. § 3501, https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf.

¹⁷ Exec. Order 13563, *Improving Regulation and Regulatory Review*, Vol. 76 No. 14, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

¹⁸ Exec. Order 13610, *Identifying and Reducing Regulatory Burdens*, Vol. 77 No. 93, 2012, https://www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf.

initiative, or combination of initiatives, that would eliminate two million hours or more in annual burden.” It asks other agencies to “eliminate at least 50,000 hours in annual burden.”¹⁹ These retrospective review guidelines have met with limited success, however, largely because they did not change underlying incentives.²⁰

Applying Fiscal Budget Concepts to Regulation

Despite central oversight and requirements for public input and regulatory impact analysis, the growth in new regulations continues, and with it concerns that we have reached a point of diminishing returns. The application of fiscal budgeting concepts to regulation holds the potential to bring more accountability and transparency to the regulatory process.

The regulatory budget is premised on the view that the transfer of private resources by regulation is no less a cost imposed by government than the collection and expenditure of private resources through the tax and spending powers. But while government expenditures are constrained by the ability to tax and borrow, regulatory costs are subject to no built-in limitations. By creating a systematic limitation on regulatory costs, a regulatory budget would counteract the tendency by agencies to treat private resources as a “free good.”²¹

The idea of a “regulatory budget” is not new.²² In 1980, President Jimmy Carter’s *Economic Report of the President* discussed proposals “to develop a ‘regulatory budget,’ similar to the expenditure budget, as a framework for looking at the total financial burden imposed by regulations, for setting some limits to this burden, and for making tradeoffs within those limits.” The *Report* noted analytical problems with developing a regulatory budget, but concluded that “tools like the regulatory budget may have to be developed” if governments are to “recognize that regulation to meet social goals competes for scarce resources with other national objectives,” and set priorities to achieve the “greatest social benefits.”²³

¹⁹ Office of Information and Regulatory Affairs, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Reducing Reporting and Paperwork Burdens*, 2012, <https://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/reducing-reporting-and-paperwork-burdens.pdf>.

²⁰ Susan E. Dudley, *Testimony before the Joint Economic Committee: Reducing Unnecessary and Costly Red Tape through Smarter Regulations*, June 26, 2013, http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2013_06_26_Dudley_JEC_statement.pdf

²¹ Jeffrey A. Rosen and Brian Callanan, *The Regulatory Budget Revisited*, *Administrative Law Review*, Vol. 66, No. 4- 839, 2014.

²² Rosen & Callanan, 2014, provide a concise review of previous research and efforts. 848-853.

²³ Chairman of the Council of Econ. Advisers, *1980 Economic Report of the President*, 125, 1980, http://fraser.stlouisfed.org/publications/ERP/page/4569/download/46077/4569_ERP.pdf.

According to Christopher DeMuth, writing in 1980:

The regulatory budget would operate by close analogy to the conventional fiscal process. Each year (or at some longer interval), the federal government would establish an upper limit on the costs of its regulatory activities to the economy and would apportion this sum among the individual regulatory agencies. This would presumably involve a budget proposal developed by OMB in negotiation with the regulatory agencies, approved by the President, and submitted to Congress for review, revision, and passage. Once the President had signed the final budget appropriations into law, each agency would be obliged to live within its regulatory budget for the time period in question. The budget would cover the total costs of all regulations past and present, not just new ones.²⁴

Advantages of a Regulatory Budget

By making more transparent the private sector resources needed to achieve regulatory objectives, a regulatory budget would encourage policy officials in the legislative and executive branches, as well as the public, to consider regulatory priorities and tradeoffs. This transparency would also strengthen political accountability and discipline. Expected benefits would be considered up front (when issuing legislation or new regulations), and elected officials would have to consider how much achieving particular goals are worth.

A pure regulatory budget would require an explicit consideration of the aggregate economic costs of regulation. This transparency would “afford policymakers and the public a more complete picture of the economic footprint of regulation.”²⁵

Resources would likely be better allocated because policy makers would have incentives to find the most cost-effective ways of achieving policy goals, not only among alternative forms of regulation, but among different vehicles for addressing a problem. It might reduce “the increasing tendency of government to pursue its objectives through regulation rather than taxing and spending—even when regulation is otherwise less desirable—*because* regulation is less constrained.”²⁶

By constraining the private sector resources that can be committed to achieving regulatory mandates, a regulatory budget could impose internal discipline on regulatory agencies, perhaps lessening the need for case-by-case oversight. By focusing on the costs of regulations and allowing agencies to set priorities and make tradeoffs among regulatory programs, it might

²⁴ Christopher C. DeMuth, *The Regulatory Budget*, Regulation Magazine, 31, Mar.–Apr. 1980.

²⁵ Rosen & Callanan, *The Regulatory Budget Revisited*, 842.

²⁶ DeMuth, *The Regulatory Budget*, 38.

remove some of the contentiousness surrounding benefit-cost analysis and presidential oversight.²⁷ “Faced with a budget constraint, the agencies would measure the costs and benefits of individual regulatory proposals in order to further their own organizational interests rather than to satisfy the minimum requirements of an executive order or judicial review.”²⁸

A regulatory budget constraint would also encourage evaluation of existing rules’ costs and effects. As noted above, despite broad support, initiatives to require ex post evaluation of regulations have met with limited success²⁹ largely because they did not change underlying incentives. If the issuance of new regulations was contingent on finding a regulatory offset, agencies would have incentives to evaluate both the costs and effectiveness of existing programs.³⁰

Analytical Issues with a Regulatory Budget

While a regulatory budget holds considerable appeal for making regulatory policy more transparent, accountable, and cost-effective, the analytical problems associated with it are non-trivial. The task of gathering and analyzing information on the costs of all existing regulations in order to establish a baseline budget would be enormous, and the resulting numbers not very reliable. Even defining what should be considered “costs” will be challenging. Estimating the opportunity costs of regulations is not as straightforward as estimating fiscal budget outlays, where past outlays are known and future outlays can generally be predicted with some accuracy. Since the late 1990s, OMB has been compiling agency estimates of the costs (and benefits) of major regulations with mixed results.³¹

An incremental approach, such as a “regulatory PAYGO,”³² would avoid some of these difficulties while retaining many of the benefits of a regulatory budget, as the experience in other countries highlighted below shows. Under a regulatory PAYGO or “one-for-one” approach, regulatory agencies would be required to eliminate an outdated or duplicative regulation before issuing a new regulation of the same approximate economic impact. Unlike a regulatory budget,

²⁷ Dudley, *Improving Regulatory Accountability: Lessons from the Past and Prospects for the Future*.

²⁸ DeMuth, *The Regulatory Budget*, 36.

²⁹ Susan E. Dudley prepared statement before the Senate Homeland Security and Government Affairs Committee, July 2011, http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/Dudley_HSGAC_20110718.pdf.

³⁰ Senator Mark Warner, prepared statement at *Federal Regulation: A Review of Legislative Proposals, Part I*. June 23, 2011, <http://www.hsgac.senate.gov/download/2011-06-23-warner-testimony>.

³¹ Susan E. Dudley, *Perpetuating Puffery: An Analysis of the Composition of OMB’s Reported Benefits of Regulation*, 47 J, Business Economics, 2012.

³² See statements of Senator Mark Warner and Senator Rob Portman at a Homeland Security and Government Affairs Committee hearing on June 23, 2011, <http://www.hsgac.senate.gov/hearings/federal-regulation-a-review-of-legislative-proposals-part-i>.

agencies would only have to estimate costs for regulations being introduced (which they should already do) and offsetting regulations they propose to remove.

Nevertheless, deciding what “costs” to include in estimating budgets or offsets will necessarily require judgment. Canada’s “One-for-One Rule,” for example, focuses on direct administrative burden costs on businesses, similar to the Paperwork Reduction Act, although the burdens are assigned dollar values. The UK “One-in, Two-out” program attempts to include all net costs on businesses.

Understanding the full social costs of regulation is difficult, if not impossible, and some regulatory impacts will be harder to estimate than others. What are the costs associated with homeland security measures that reduce airline travelers’ privacy? What are the costs of regulations that prevent a promising, but yet unknown, product from reaching consumers? Even regulations for which costs appear to be straightforward, such as corporate average fuel economy standards that restrict the fleet of vehicles produced, depend on assumptions about consumer preferences and behaviors that may not reflect American diversity. The Environmental Protection Agency and the Department of Transportation estimate that these rules will have large negative costs (even if benefits were zero), because, according to their calculations, the fuel savings consumers will derive from driving more fuel-efficient vehicles will outweigh the increased purchase price.³³ Judgments as to the credibility of such estimates³⁴ and how negative costs should be treated under a regulatory budget will have to be made.

According to DeMuth:

Clearly, a workable budgeting system would have to rest on a practical compromise – some measure of “expenditures by firms, consumers, and third parties” that was narrow enough to facilitate general agreement in particular cases but not so narrow as to stimulate massive cost substitution strategies by the agencies.³⁵

How a budget or an offset requirement would affect agencies’ incentives for estimating costs is uncertain. In developing a baseline estimate of the costs of existing regulations, agencies may have incentives to overstate costs, particularly for regulations they may want to trade in

³³ According to EPA & DOT, under the recently proposed standards for heavy-duty trucks, “the buyer of a new long-haul truck in 2027 would recoup the investment in fuel-efficient technology in less than two years through fuel savings.” Press Release: EPA, DOT *Propose Greenhouse Gas and Fuel Efficiency Standards for Heavy-Duty Trucks*. June 19, 2015,

<http://yosemite.epa.gov/opa/admpress.nsf/0/7C555190101CFCAD85257E69004A444F>.

³⁴ For a discussion of this question, see Brian F. Mannix and Susan E. Dudley, *The Limits of Irrationality as a Rationale for Regulation and Please Don’t Regulate my Internalities*, *J. Policy Analysis & Management*, 34:3, Summer, 2015.

³⁵ DeMuth, *The Regulatory Budget*, 39.

exchange for new initiatives. In considering regulatory offsets, should ex ante estimates of costs be used, or ex post? Perhaps ex ante cost estimates adjusted based on actual experience would be the most practical and reliable approach.³⁶

Congress would probably need to establish regulatory burden baselines in new authorizing legislation. Providing an entity outside of the executive branch (such as CBO or GAO) with the resources and mandate to (1) estimate the regulatory costs associated with executing new legislation, and (2) evaluate and critique agency estimates of regulatory costs could be critical to the success of a regulatory budget or PAYGO.³⁷

Other Countries' Experiences with Regulatory Offsets

Other countries, such as the Netherlands,³⁸ the United Kingdom,³⁹ and Canada⁴⁰ have addressed some of these challenges and initiated programs that require new regulatory costs to be offset by removal of existing regulatory burdens. The U.S. can learn some lessons from their experience.

The Netherlands

The Netherlands is considered a leader in Europe and throughout the world for its efforts to reduce the administrative burdens of its regulations.⁴¹ According to the World Bank, “The programme’s innovative design—a 25% target reduction in regulatory costs, a link between regulatory reforms and the budget cycle, and the establishment of ACTAL (the Dutch Advisory Board on Administrative Burden) as an independent watchdog of the reforms—lies behind the success.”⁴²

The establishment of net quantitative burden reduction targets has been a central feature of the Dutch policy along with the use of the Standard Cost Model⁴³ method for estimating

³⁶ This approach might stimulate a comparison of predicted and actual regulatory costs, which would have the added advantage of informing and improving future regulatory impact estimates.

³⁷ Dudley, Senate Homeland Security and Government Affairs Committee 2011 testimony.

³⁸ Government of the Netherlands, *Regulatory Burden on Businesses*, <http://www.government.nl/issues/reducing-the-regulatory-burden/regulatory-burden-on-businesses>.

³⁹ Gov.U.K., *One-in, two-out: statement of new regulation*, <https://www.gov.uk/government/collections/one-in-two-out-statement-of-new-regulation>.

⁴⁰ Treasury Board of Canada Secretariat, *Backgrounder- Legislating the One-for-One Rule*, <https://www.tbs-sct.gc.ca/rtrap-parfa/0129bg-fi-eng.asp>.

⁴¹ OECD, *Better Regulation in Europe: the Netherlands*, OECD publishing, Paris, 2010.

⁴² World Bank, *Review of the Dutch Administrative Burden Reduction Programme*, 2007, <http://www.doingbusiness.org/reports/thematic-reports/review-of-the-dutch-administrative-burden-reduction-programme>.

⁴³ See The International Standard Cost Model Manual. October 2005. <http://www.oecd.org/gov/regulatory-policy/34227698.pdf>

administrative costs. Between 2003 and 2007, the policy achieved a net reduction in administrative burdens of 20%.⁴⁴ The Netherlands Cabinet set a second target of 25% net administrative burden reduction across ministries for the period of 2007 to 2011.⁴⁵ Schout and Sleifer note that the agenda was broadened in 2007 to include compliance costs (“i.e., information costs plus costs related to investments need to comply with the rules”).⁴⁶ Currently, the Government is working towards a goal to save €2.5 billion of regulatory burden between 2012 and 2017.⁴⁷ The latter will be achieved “through the introduction of new regulations linked to the revision or scrapping of existing rules.”⁴⁸

Established by decree, the independent ACTAL advises the Government and the Parliament on reducing regulatory burdens. It provides 1) ex ante opinions on legislation, focusing on all forms of costs borne by business, citizens and professionals, 2) regulatory burden audits, 3) strategic advice on the stock of existing legislation, and 4) other opinions that can improve the Dutch approach for reducing regulatory burden.⁴⁹

Though not an explicit offset (as in the UK and Canada), the quantitative targets for net burden reductions has proved to be an effective mechanism (lacking in the U.S.) for creating awareness of the costs of regulation, while providing incentives to individual government agencies to find ways to reduce burdens.⁵⁰

The United Kingdom

In January 2011, the United Kingdom commenced its “One-in, One-out” policy, requiring any increases in the cost of regulation to be offset by deregulatory measures of at least an equivalent value. Biannual “Statements of New Regulation (SNR)” list completed and upcoming regulatory and deregulatory measures. According to the seventh SNR, “at the close of One-in, One-out on 31 December 2012, this ambition had been exceeded; and the total annual net cost to business

⁴⁴ Jeroen Nijland, *The Dutch Approach*, Colloquium Notes EIPASCOPE 2008/2, 2008, http://www.eipa.eu/files/repository/eipascope/20080905133709_SCOPE2008-2_7_JeroenNijland.pdf.

⁴⁵ Regulatory Reform Group, Government of the Netherlands, *Management Summary Action Plan reduction red tape for businesses*, <http://www.government.nl/issues/reducing-the-regulatory-burden/documents-and-publications/reports/2008/07/30/white-paper-regulatory-reform-group.html>.

⁴⁶ Ambrus, M., K. Arts, E. Hey, H. Raulus (eds), *The Role of ‘Experts’ in International Decision-Making: Advisors, Decision-Makers or Irrelevant*, Cambridge University Press, 2014, P. 377.

⁴⁷ Government of the Netherlands, *Regulatory Burden on Businesses*, <http://www.government.nl/issues/reducing-the-regulatory-burden/regulatory-burden-on-businesses>.

⁴⁸ European Commission, *Reindustrialising Europe: Member States’ Competitiveness Report 2014*, SWD(2014) 278, 2014, http://ec.europa.eu/growth/industry/competitiveness/reports/ms-competitiveness-report/index_en.htm.

⁴⁹ ACTAL, *About ACTAL*, <http://www.actal.nl/english/about-actal/>.

⁵⁰ As noted by Ambrus, M. et al. in *The Role of ‘Experts’ in International Decision-Making: Advisors, Decision-Makers or Irrelevant*: “It is important to realize that these objectives are net targets so that administrative costs arising from new regulations have to be compensated by reducing administrative costs elsewhere.” (p. 376).

has been reduced by around £963 million.”⁵¹ Starting January 2013, the UK government moved to “One-in, Two-out” (OITO), requiring for “every pound of cost which new domestic regulation imposes on business, two pounds of cost must be removed through deregulation.”⁵² As a result of both requirements, from January of 2011 to July of 2015 the annual net regulatory costs borne by businesses had decreased by £2,189 million.⁵³

The UK’s regulatory burden offset programs were the first national systems to focus on total direct compliance cost,⁵⁴ rather just the administrative burden.⁵⁵ They complement other UK “better regulation” initiatives, including ex ante requirements—similar to those expressed in U.S. Executive Order 12866—that departments 1) demonstrate that non-regulatory means cannot achieve policy objectives, 2) provide analysis demonstrating that the net benefits of a regulatory approach are clearly larger than alternative approaches, and 3) devise implementation plans that are “proportionate; accountable; consistent; transparent and targeted.”⁵⁶ According to the UK government’s Principles of Better Regulation, “there will be a general presumption that regulation should not impose costs an obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made.”⁵⁷

A cabinet subcommittee, the Reducing Regulation Committee, is responsible for the UK’s de-regulation policy, including providing final clearance for rules subject to OITO. In addition, an independent Regulatory Policy Committee (RPC), whose “members include economists, senior business people and a civil society representative,” provides expert opinions to departments and

⁵¹ Better Regulation Executive, *The Seventh Statement of New Regulation*, 2013, <https://www.gov.uk/government/publications/one-in-two-out-seventh-statement-of-new-regulation-january-to-june-2014>.

⁵² Better Regulation Executive, *The Ninth Statement of New Regulation*, 2014, <https://www.gov.uk/government/publications/one-in-two-out-ninth-statement-of-new-regulations>.

⁵³ Better Regulation Executive, *The Ninth Statement of New Regulation*.

⁵⁴ The Better Regulation Framework Manual states that “only direct impacts on business should be scored for OITO,” and defines a direct impact as one “that can be identified as resulting directly from the implementation or removal/simplification of the measure.” “Subsequent effects that occur as a result of the direct impacts, including behaviour change, are indirect. These are not scored for OITO.” Department for Business Innovation & Skills, *Better Regulation Framework Manual: Practical Guidance for UK Government Officials*, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421078/bis-13-1038-Better-regulation-framework-manual.pdf.

⁵⁵ For example, the Canadian program appears to focus on the cost of the time businesses must spend to comply with reporting requirements, and the U.S. Paperwork Reduction Act of 1980 focuses on the hours spent responding to government information requests.

⁵⁶ Better Regulation Executive, *The Ninth Statement of New Regulation*.

⁵⁷ Department for Business Innovation & Skills, *Better Regulation Framework Manual: Practical Guidance for UK Government Officials*, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421078/bis-13-1038-Better-regulation-framework-manual.pdf.

the RRC. “Only estimates of the net cost to business that have been validated by the RPC are accepted for the OITO account.”⁵⁸

EU regulations and directives affecting UK businesses and citizens are not covered by OITO, unless implementation of a European directive goes beyond meeting the minimum requirements defined at the EU level. The UK Business Task Force recommended that “The European Commission should introduce a one-in, one-out principle for European legislation, and offset any new burdens on business by reducing burdens of an equivalent value elsewhere,”⁵⁹ however, this does not appear likely in the near term.⁶⁰

Canada

Canada launched its “One-for-One Rule” in April of 2012 and, in April 2015 passed the Red Tape Reduction Act,⁶¹ thus establishing it in law. Similar to the UK approach, new regulatory changes that increase administrative burdens must be offset with equal burden reductions elsewhere. Further, for each new regulation that imposes administrative burden costs, cabinet ministers must remove at least one regulation.⁶² The One-for-One Rule targets administrative burdens on businesses, and in this sense may be less comprehensive than the Dutch or UK offset programs which apply to a broader category of compliance costs.⁶³

Administrative burden includes planning, collecting, processing and reporting of information, completing forms and retaining data required by the federal government to comply with a regulation. This includes filling out license applications and forms, as well as finding and compiling data for audits and becoming familiar with information requirements.⁶⁴

⁵⁸ Better Regulation Executive. BRI 40, Written evidence submitted by the Better Regulation Executive, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/regulatory-reform-committee/better-regulation/written/10905.html>.

⁵⁹ Prime Minister's Office and Department for Business, Innovation & Skills, *Cut EU red tape: Report from the Business Taskforce*, updated 24 February 2014, <https://www.gov.uk/government/publications/cut-eu-red-tape-report-from-the-business-taskforce/cut-eu-red-tape-report-from-the-business-taskforce>.

⁶⁰ President Barroso of the European Commission remarked, “EU rules are not wrong or burdensome by definition as some tend to believe. On the contrary: when some people think that ideas like ‘one in – one out’ would be a great achievement, we often do ‘one in – 28 out’. This is something we have to explain: very often, a single European regulation replaces 28 different regulations, namely in the single market,” Oct. 2014, http://europa.eu/rapid/press-release_SPEECH-14-691_en.htm.

⁶¹ Parliament of Canada, Assented to 23rd April 2015, Bill C-21, *An Act to control the administrative burden that regulations impose on businesses*, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=7934800&File=4>.

⁶² Treasury Board of Canada Secretariat, *One-for-One Rule*, <http://www.tbs-sct.gc.ca/rtrap-parfa/fofo-upu-eng.asp>.

⁶³ Treasury Board of Canada Secretariat, *Counting Administrative Burden Regulatory Requirements*, <http://www.tbs-sct.gc.ca/rtrap-parfa/abb-brfa/cabrr-derfa-eng.asp>. See 3-part test.

⁶⁴ Treasury Board of Canada Secretariat, *Counting Administrative Burden Regulatory Requirements*, <http://www.tbs-sct.gc.ca/rtrap-parfa/abb-brfa/cabrr-derfa-eng.asp#chap5-6>.

While the types of burdens included are similar to those covered by the U.S. Paperwork Reduction Act, there are two important differences: First, Canada relies on the standard cost model (SCM) to monetize the administrative burdens, which reinforces the financial impact of the requirements. More importantly, the offset requirement imposes a constraint on the growth in administrative burdens, increasing accountability and providing concrete incentives to weigh costs and benefits of new and existing requirements and to reduce burdens.

Each department must count the requirements imposed by regulations, and the counts across all covered departments are summed to derive the government-wide Administrative Burden Baseline (ABB). These counts are updated annually to include newly introduced or amended regulations that add or eliminate administrative burden requirements. Regulatory changes not covered by One-for-One are nevertheless counted and included in the ABB.

The One-for-One Rule is an element of Canada’s broader Red Tape Action Plan. In a 2012 Cabinet Directive on Regulatory Management, the government committed to:

1. “Protect and advance the public interest ... as expressed by Parliament in legislation”;
2. “Advance the efficiency and effectiveness of regulation” using benefit-cost analysis;
3. “Make evidence-based decisions”;
4. “Promote a fair and competitive market economy”;
5. “Monitor and control the regulatory administrative burden,” especially on small business;
6. “Create accessible, understandable, and responsive regulation through engagement, transparency, accountability, and public scrutiny”; and
7. “Require timeliness, policy coherence, and minimal duplication throughout the regulatory process” (including internationally).⁶⁵

As in the Netherlands and the UK, a high-level oversight body appears to be an important element of the program’s success.⁶⁶ The Canadian Regulatory Affairs Sector of the Treasury Board is charged with ensuring Canada’s “one-for-one” rule is correctly implemented and must verify and approve both new regulations and credits.

Conclusion

Despite analytical difficulties, a form of a regulatory budget has the potential to impose some needed discipline on regulatory agencies, generate a constructive debate on the real impacts of

⁶⁵ Treasury Board of Canada Secretariat, Cabinet Directive on Regulatory Management, 2012, Catalogue No. ISBN, <https://www.tbs-sct.gc.ca/rtrap-parfa/cdrm-dcgr/cdrm-dcgrpr-eng.asp>.

⁶⁶ Ana Maria Zarate Moreno, *Regulatory Pay as you Go: Lessons from Other Countries*, The George Washington University Regulatory Studies Center, July 15, 2015, <http://regulatorystudies.columbian.gwu.edu/regulatory-pay-you-go-lessons-other-countries>.

regulations, and ultimately lead to more cost-effective achievement of public priorities. Other countries, including the United Kingdom,⁶⁷ Canada,⁶⁸ the Netherlands,⁶⁹ and others,⁷⁰ have addressed these issues and initiated programs that apply budgeting tools to constrain the growth in regulatory burdens.

While it will never be possible to estimate the real social costs of regulations with any precision, a regulatory budget or a more modest regulatory PAYGO should provide incentives for agencies, affected parties, academics, Congressional entities, and non-governmental organizations to improve upon the rigor of regulatory impact estimates.

As President Carter's Economic Report of the President concluded in 1980:

The Nation must recognize that regulation to meet social goals competes for scarce resources with other national objectives. Priorities must be set to make certain that the first problems addressed are those in which regulations are likely to bring the greatest social benefits. Admittedly, this is an ideal that can never be perfectly realized, but tools like the regulatory budget may have to be developed if it is to be approached.⁷¹

⁶⁷ Department for Business Innovation and Skills, *2010 to 2015 government policy: business regulation*, Updated 8 May 2015,

<https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation>.

⁶⁸ Treasury Board of Canada Secretariat, *Backgrounder- Legislating the One-for-One Rule*.

⁶⁹ Government of the Netherlands, *Regulatory Burden on Businesses*, <http://www.government.nl/issues/reducing-the-regulatory-burden/regulatory-burden-on-businesses>.

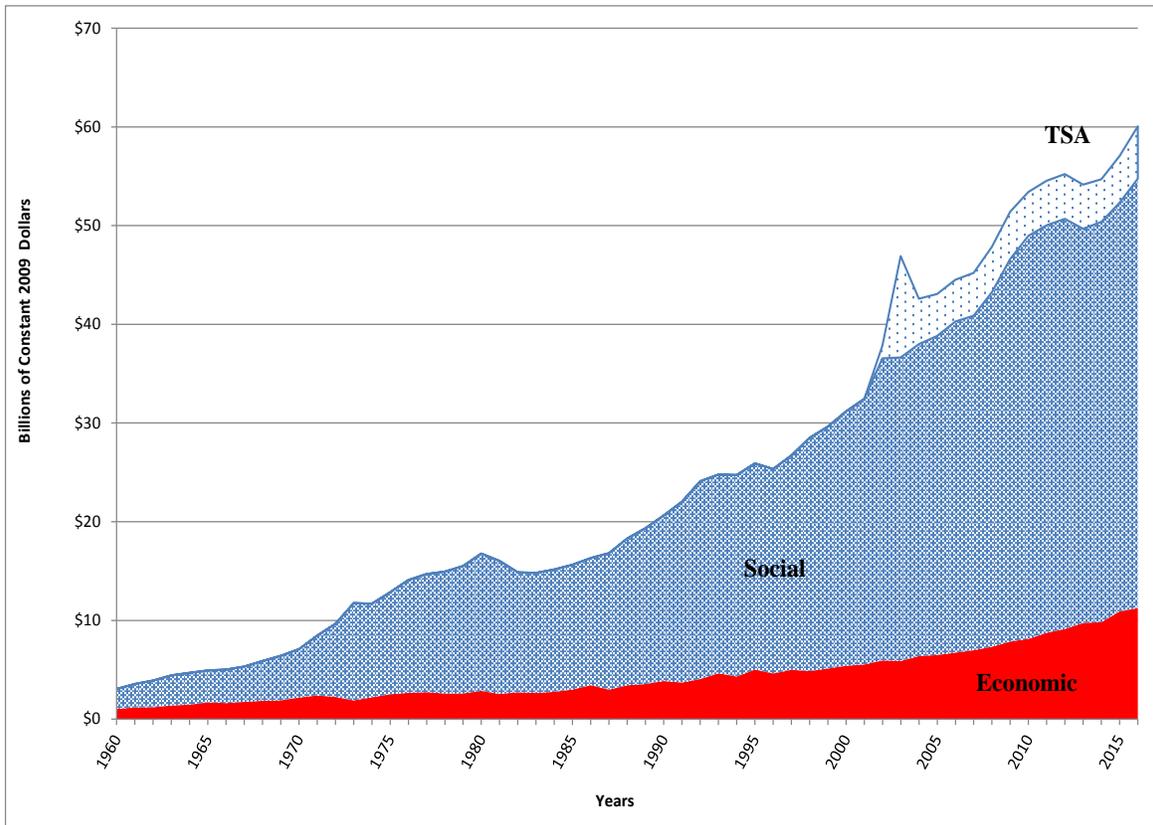
⁷⁰ Australia and Portugal have also undertaken initiatives to control the regulatory burden. Australia requires that "the cost burden of new regulation must be fully offset by reductions in existing regulatory burden." Portugal has adopted a one in, one out rule.

⁷¹ Chairman of the Council of Econ. Advisers, *1980 Economic Report of the President*.

Attachment: Measures of Regulatory Activity

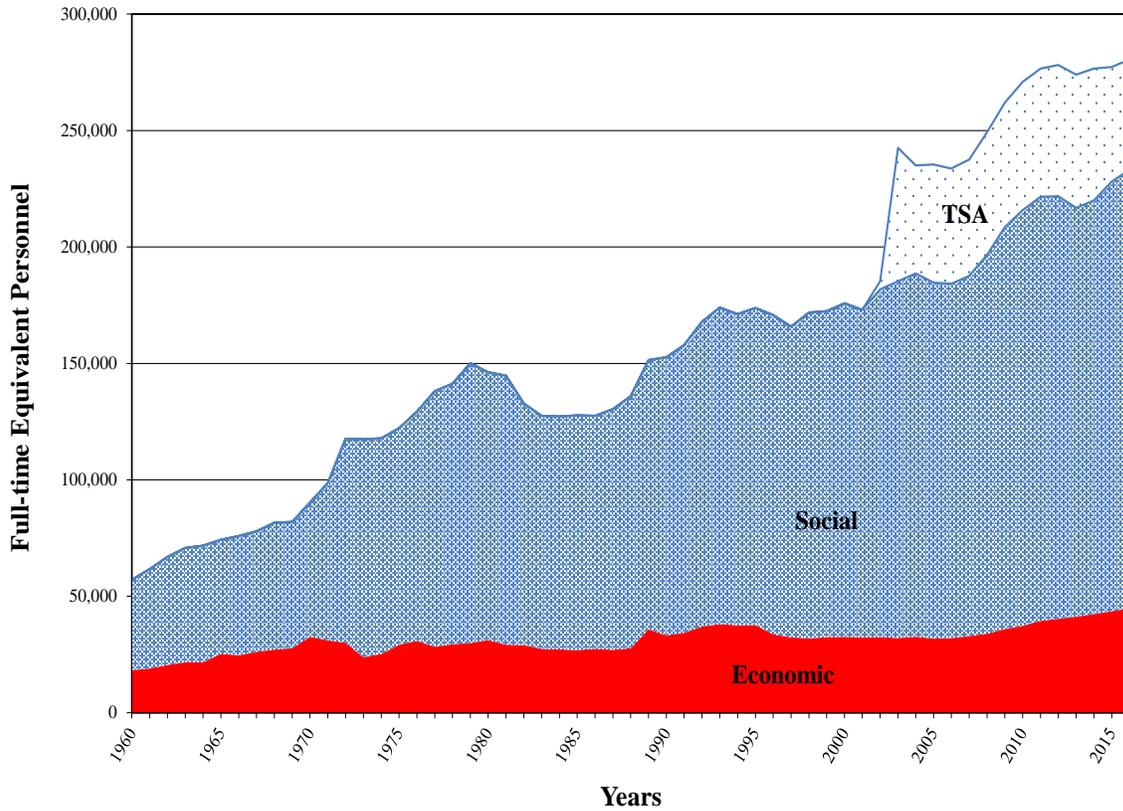
Unlike the fiscal budget, which tracks direct spending supported by taxes, there is no mechanism for keeping track of the off-budget spending generated through regulation. Thus, efforts to track regulatory activity over time often depend on proxies, such as the size of the budgets and staffing of regulatory agencies (Figures 1 and 2), the number of new regulations issued (Figure 3), the number of pages printed in the *Federal Register* (Figure 4), or the pages of federal regulatory code (Figure 5).

Figure 1
Budgetary Costs of Federal Regulation, Adjusted for Inflation



Source: Weidenbaum Center, Washington University and the George Washington University Regulatory Studies Center. Derived from the *Budget of the United States Government* and related documents, various fiscal years.

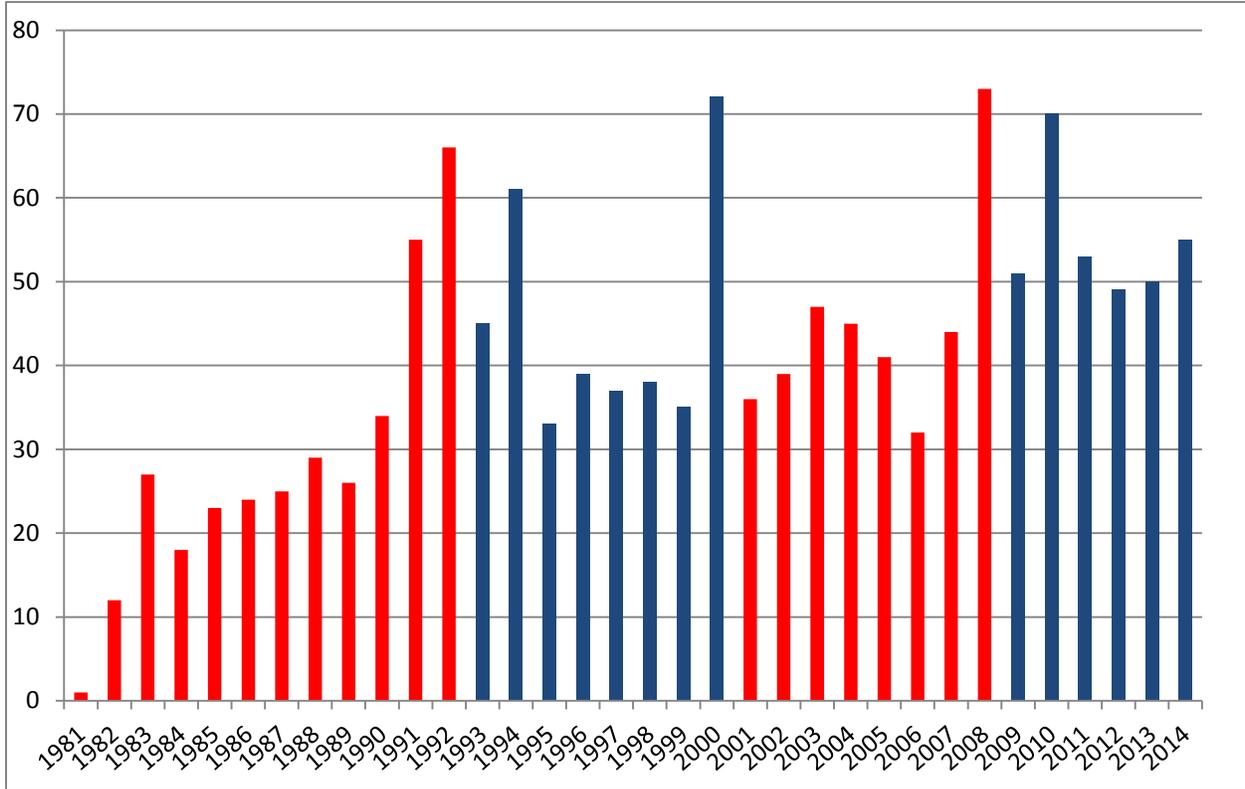
Figure 2
Staffing of Federal Regulatory Agencies



Source: Weidenbaum Center, Washington University and the George Washington University Regulatory Studies Center. Derived from the *Budget of the United States Government* and related documents, various fiscal years.

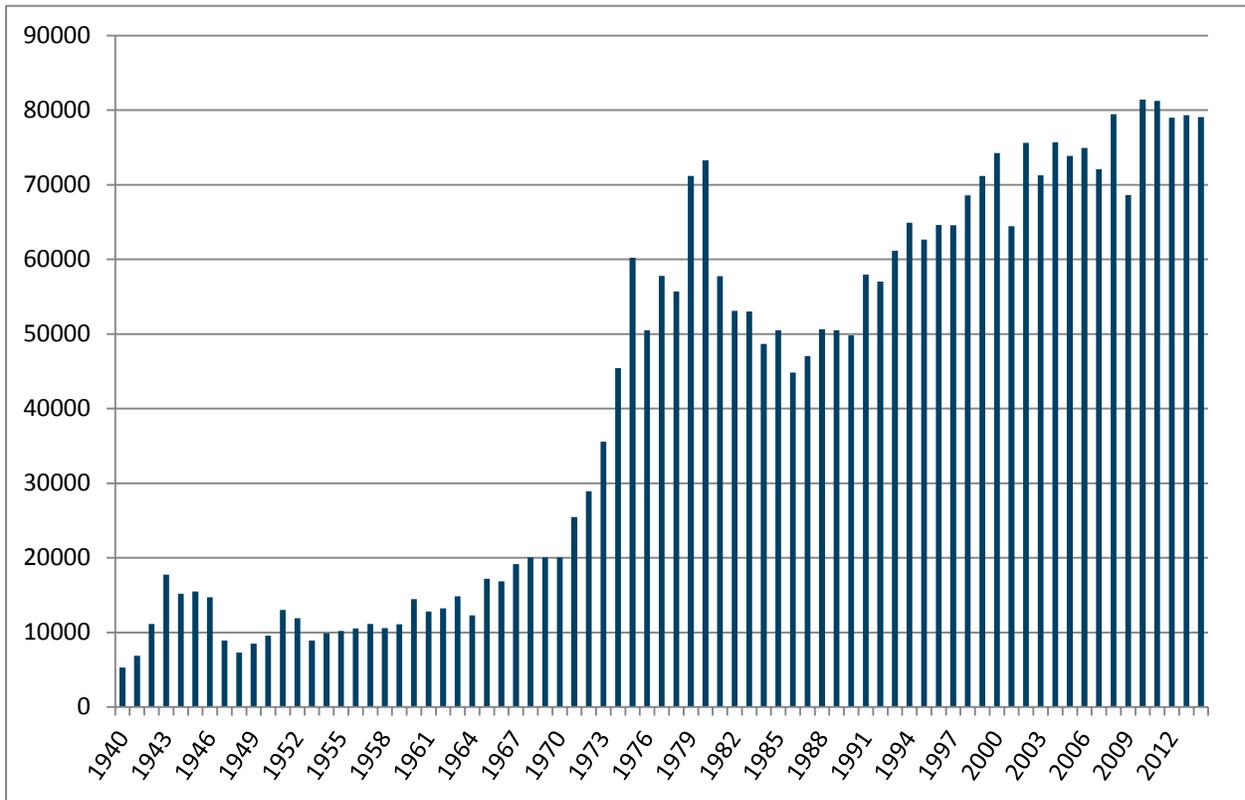
Figure 3

**Number of Final Economically Significant Rules
Published by “Presidential Year”**



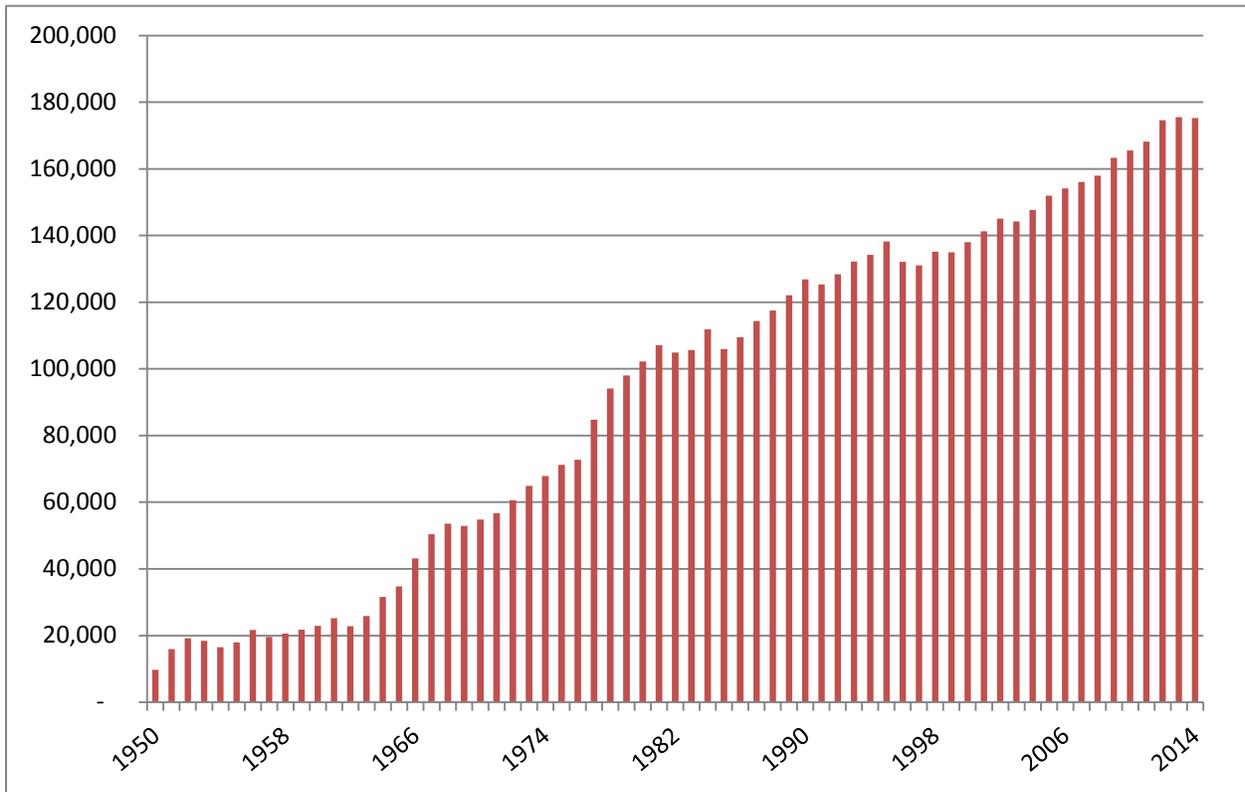
Source: RegInfo.gov: Number of economically significant regulations published between February 1 and January 30.

Figure 4
Federal Register Pages



Source: <https://www.federalregister.gov/uploads/2015/05/OFR-STATISTICS-CHARTS-ALL1-1-1-2014.xls>

Figure 5
Code of Federal Regulation Pages



Source: <https://www.federalregister.gov/uploads/2015/05/OFR-STATISTICS-CHARTS-ALL1-1-1-2014.xls>