

OIRA's Regulatory Reform Report for FY 2019

By: Mark Febrizio & Daniel R. Pérez | December 18, 2019

The Office of Information and Regulatory Affairs (OIRA) released its [annual Regulatory Reform Status Report](#) on December 6, 2019. The report, which in the past has been [published along with the Fall Unified Agenda](#), compiles executive branch agencies' continued efforts to comply with [Executive Order 13771](#).

OIRA's report [announces](#) that agencies issued 150 deregulatory actions and 35 regulatory actions, producing \$13.5 billion in regulatory cost savings in 2019 present value terms. Nevertheless, this falls short of the FY 2019 cost caps [established](#) by the Office of Management and Budget (OMB) in last year's report, which projected savings of \$18 billion in 2018 present value terms. This year's report also includes [cost caps for FY 2020](#), which are set at \$51.6 billion (2019 present value). Despite the report's glossy highlights, closer analysis suggests that the administration's regulatory reform efforts deserve additional scrutiny and improved transparency, such as providing itemized cost savings for each completed action. Additionally, a look beyond the topline figures highlights several "firsts" in agency implementation of EO 13771—the ratio of significant actions falling below the 2-for-1 metric, agency cost savings coming up short of their government-wide targets, and next year's budget caps permitting some agencies to impose net costs.

Accounting for Regulatory Reform under Executive Order 13771

EO 13771, and subsequent [OMB guidance](#), directed executive branch regulatory agencies to implement two new constraints related to the rulemaking process: (1) complete two deregulatory actions for every new regulatory action taken; and (2) offset the costs imposed by regulatory actions in compliance with an incremental cost cap.

In FY 2019, agencies completed 150 deregulatory actions and 35 significant regulatory actions, for a ratio of 4.3-to-1. As we discussed in a [report for the Brookings Institution](#) (co-authored with Bridget C.E. Dooling), more types of actions count as deregulatory than regulatory. Additionally, when contrasting only significant actions (61 deregulatory and 35 regulatory), which "[facilitates a](#)

In brief...

The Regulatory Reform Results for Fiscal Year 2019 are out, and OIRA is touting that regulatory agencies produced \$13.5 billion in present value cost savings. Beyond the glossy highlights, however, are a few important "firsts" in implementation, such as total agency cost savings falling short of the government wide targets.

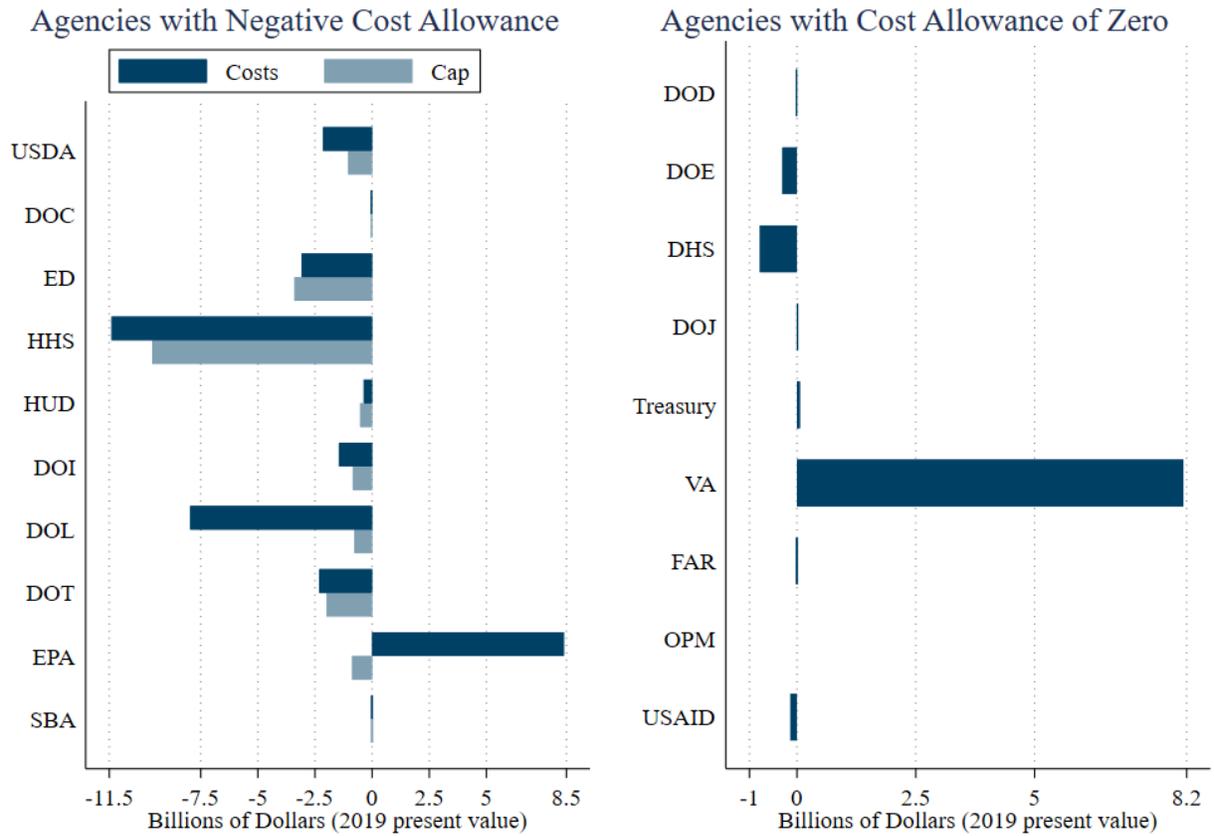
[more meaningful comparison](#),” the ratio falls to 1.7-to-1, marking the first time this metric is below the 2-for-1 standard.

Agency actions that count as regulatory or deregulatory also contribute toward the aggregate annual cost caps, meaning that new regulatory costs must be offset with cost savings from deregulatory actions. Because the sizes and impacts of different actions vary widely, looking at cost offsets is generally more informative than the ratio of counts. Notably, for the first time in FY 2019, agencies fell short of the government-wide cost savings target under EO 13771. After adjusting the total cost cap and cost savings to their [2019 present value equivalents](#) (to make them directly comparable), the estimates suggest that agencies eliminated \$13.5 billion in regulatory costs—approximately \$5.7 billion less than the \$19.2 billion in cost savings required by the [FY 2019 regulatory budget](#). To understand more specifically why agencies failed to achieve the government-wide budget for FY 2019, we examine the results across individual agencies in more detail.

Agency Compliance with FY 2019 Cost Allowances

In contrast to the [previous report](#) for FY 2018, some executive regulatory agencies imposed additional net costs on the public in [FY 2019](#). Four agencies—the Department of Justice (DOJ), the Treasury Department, the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA)—issued actions with costs that outweighed the cost savings each agency produced. While the costs from DOJ and Treasury were relatively minimal, the VA and EPA imposed \$8.1 billion and \$8.4 billion in net costs, respectively, as shown by Figure 1:

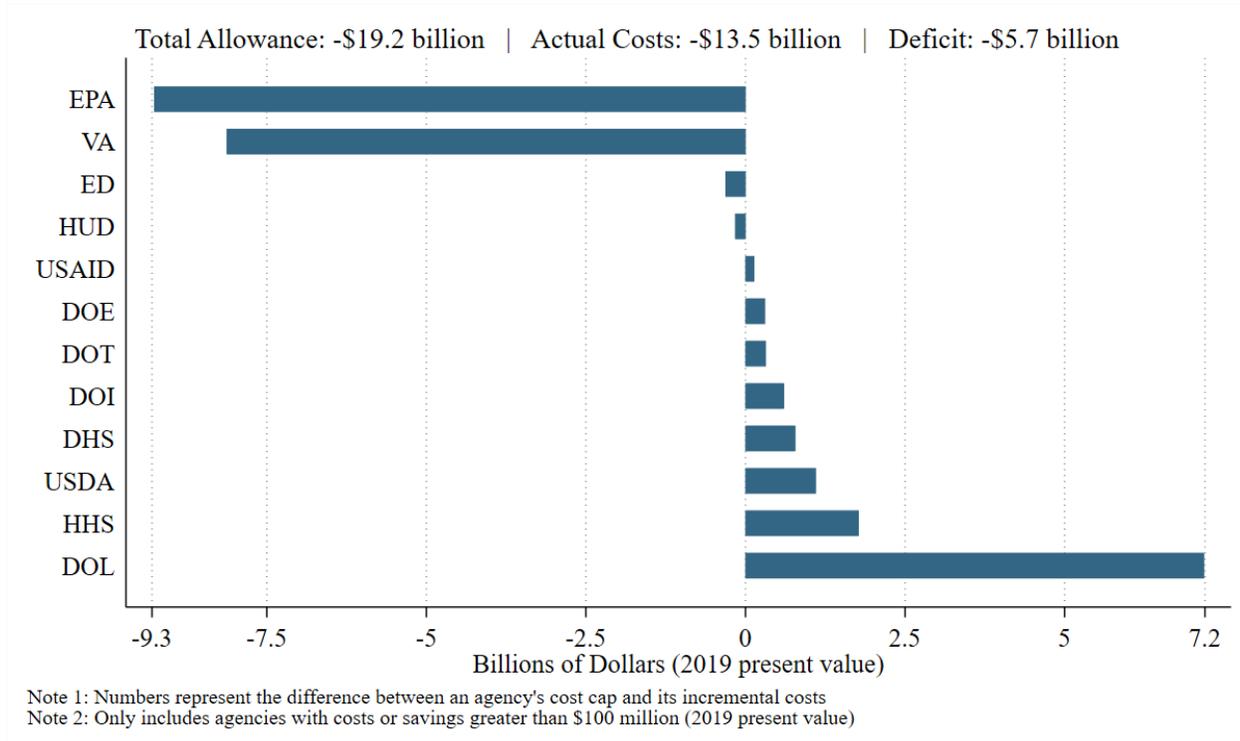
Figure 1: FY 2019 Cost Accounting by Agency



Note: Only includes agencies with qualifying regulatory or deregulatory actions

Figure 2 depicts agency compliance with the cost caps by taking the difference between each agency's allowance and the costs they produced:

Figure 2: Agency Compliance with Cost Allowances



In addition to EPA and the VA, the Department of Education (ED) and the Department of Housing and Urban Development (HUD) failed to meet their cost savings targets by \$313.6 million and \$160.0 million (e.g., calculated as the difference between HUD’s cost allowances of -\$525.0 million and estimated cost savings of -\$365.0 million). Conversely, a number of agencies produced savings exceeding their targets, including the Department of Labor (DOL) by \$7.2 billion, the Department of Health and Human Service (HHS) by \$1.8 billion, and the Department of Agriculture (USDA) by \$1.1 billion.

Cumulative Results, FY 2020 Cost Cap, and Recommendations

A new facet of the FY 2019 report is a presentation of [cumulative results](#) for three years of Executive Order 13771, spanning FY 2017–2019. OIRA tallied up the actions and costs for each agency across the three years, resulting in a total of 393 deregulatory actions, 52 regulatory actions, and \$50.9 billion in cost savings.

Nevertheless, the presentation of the cumulative numbers requires more transparency. Simply [adding up the cost savings](#) from the [three fiscal year](#) reports leads to a total of \$45.1 billion in cumulative savings—a discrepancy that is not explained. This is further complicated by the fact that OIRA has reported the current year savings and future year caps in terms of the current year present value. In other words, the [Final Accounting for Fiscal Year 2019](#) and the [Regulatory Budget for Fiscal Year 2020](#) are presented using “the present value, as of 2019,” but the [Final](#)

[Accounting for Fiscal Year 2018](#) and the [Regulatory Budget for Fiscal Year 2019](#) “use the present value, as of 2018.” Thus, to compare these numbers accurately (even the projected and actual savings for FY 2019) requires adjusting estimates to the same present value equivalent year, as indicated by OIRA’s [Accounting Methods](#). Using a 7 percent discount rate, we adjust the cost caps and present value cost estimates for each fiscal year to their 2019 equivalents to get the results shown in Table 1:

Table 1: Cumulative Results for FY 2017-2019, Adjusted (2019 Present Value)

Fiscal Year	Final Deregulatory Actions	Final Regulatory Actions	Present Value Costs (\$ millions)	Applicable Cost Cap (\$ millions)
2017	67	3	-9,982.0	0
2018	176	14	-25,072.5	-12,016.0
2019	150	35	-13,471.0	-19,158.0
Total	393	52	-48,525.5	-31,174.0

The cumulative results suggest that total present value cost savings have exceeded total cost allowances, which we estimate to be -\$31.2 billion in 2019 present value terms. But an inconsistency remains between our figures and the cumulative cost savings figures in OIRA’s report, requiring more transparency to independently verify OIRA’s cumulative results. Furthermore, many deregulatory actions have been [unsuccessful in the courts](#), but OIRA’s reporting does not appear to adjust for cost savings that were never realized.

As the previous status reports have done, OIRA released the [Regulatory Budget for Fiscal Year 2020](#), projecting \$51.6 billion in savings (in 2019 equivalents) based on agency cost allowances. This exceeds the cumulative savings estimated for the previous three years. A quick look at the agency-level caps indicates that \$80.0 billion in planned savings come from a single rule to be jointly issued by EPA and the Department of Transportation (the final [SAFE Vehicles Rule](#)).

For the first time, the FY 2020 budget caps allow some agencies to impose net costs. For example, the Social Security Administration is estimated to add \$3.7 billion in costs, while the Department of Homeland Security is allotted a staggering \$35.2 billion in costs. Such glimpses make uncovering the estimates associated with individual actions even more critical.

In our [Brookings report](#), we recommend that OIRA increase transparency by itemizing the individual costs or cost savings for each completed action, which would permit independent derivation of OIRA’s totals. Such transparency could improve the accuracy and accountability of OIRA’s future reporting on EO 13771.