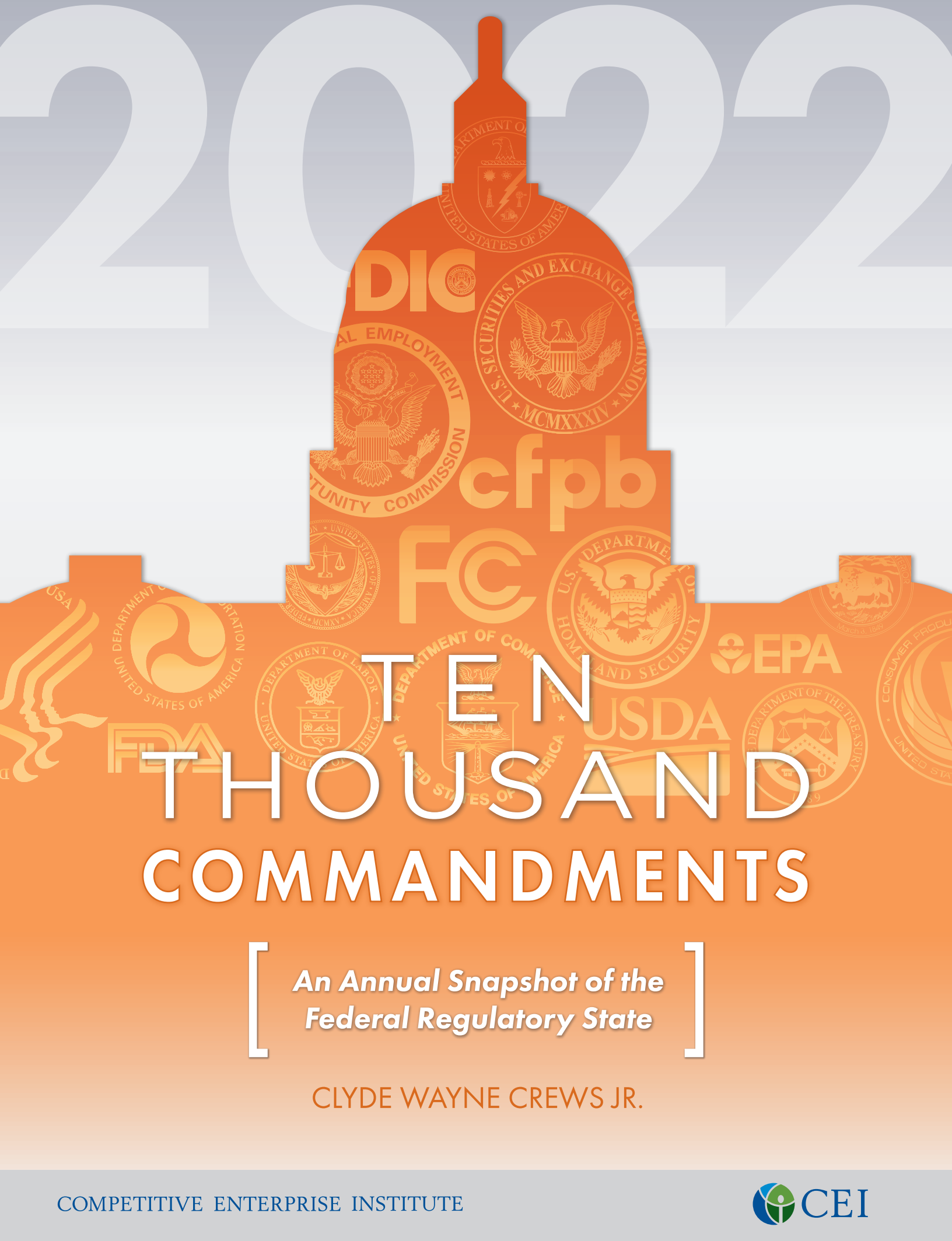


2022



TEN THOUSAND COMMANDMENTS

[*An Annual Snapshot of the Federal Regulatory State*]

CLYDE WAYNE CREWS JR.

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2022 Edition

by Clyde Wayne Crews, Jr.

Executive Summary

The Congressional Budget Office's (CBO) February 2022 Budget and Economic Outlook, covering 2022 to 2032, shows discretionary, entitlement, and interest spending of \$6.822 trillion in fiscal year 2021, with ongoing, unprecedented COVID-19–influenced deficits of \$2.775 trillion.¹ While spending is projected to decline in fiscal year 2022 and for a short time beyond, the CBO puts outlays beyond the \$7 trillion level before the end of the decade. The national debt now stands at a record \$30.01 trillion.² It was slightly under \$20 trillion when Donald Trump took office.

The pandemic alone cannot be blamed for the lack of spending restraint during the Trump administration and since, as even one-time fiscal conservatives appear to have lost the appetite for addressing government overspending. In 2020, they dropped the kite string altogether, enabling skyrocketing expenditures during the coronavirus response. Even before the pandemic, spending on debt service threatened to rival the entire defense budget, and presents a greater

threat now as interest rates rise.³ Meanwhile, relaxation of COVID-19 measures has only escalated policy makers' magical thinking that government outlays create wealth.

The cost of government extends well beyond what Washington collects in taxes and the far greater amount it spends. Federal environmental, safety and health, social, and economic regulations and interventions affect the economy by hundreds of billions—even trillions—of dollars annually. This situation is compounded by—both sincere and exploitative—responses to crises like the COVID-19 pandemic, the third major economic shock of the century, after the September 11, 2001 terrorist attacks and the 2008 financial crisis.

It is now a familiar pattern. Spending and regulatory interventions undertaken to relieve one economic crisis can become a floor for or even cause of a subsequent one, exacerbating the regulatory state's propensity for self-preservation and growth.

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Unlike on-budget spending, regulatory costs are largely obscured from public view, constituting a hidden tax.⁴ As the least disciplined aspect of government activity, regulation can be appealing to lawmakers. Budgetary pressures, which are now mounting, can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. For example, a government child care program or job training initiative could involve either increasing government spending or imposing new regulations requiring businesses to provide those benefits. The costs are never avoided, merely concealed. Just as firms pass the costs of some taxes along to consumers, regulatory compliance costs and mandates borne by businesses will percolate throughout the economy, finding their way into consumer prices and workers' wages.⁵

When the U.S. federal administrative state began its march over a century ago, few likely imagined the tangle of rules it would produce, and how those would envelop society and encourage their own replication and self-preservation efforts by those rules' administrators. Rules and programs have accumulated year after year, decade after decade, with little retrenchment. During Trump's four years, there had been some unique reversals, such as a slowdown in the issuing of new rules and some rollbacks of existing ones. That agenda has now been reversed by President Joe Biden.

Presidents routinely take steps to freeze and review predecessors' pending actions to prioritize their own.⁶ Early "Regulatory Freeze Pending Review" directives to executive branch agencies were issued by both Trump and Biden.⁷ Motives differed, of course. Biden went further in his team's singling out specific Trump rulemakings for review, with an eye to rolling them back.⁸

As detailed extensively in the 2021 edition of *Ten Thousand Commandments*, the Trump administration had gone further in its attempt at streamlining internal departmental

and agency processes and speeding regulatory approvals for private activities. At the same time, many of Trump's actions imposed rather than decreased burdens, including trade interventions like tariffs, anti-dumping and "Buy American" agendas, and domestic regulatory interventions.⁹ Nevertheless, the extensive executive actions aimed at economic liberalization were both broad-based and specific to sectors such as financial regulation, antiquities and national monuments, offshore resource access, education, health care,¹⁰ agricultural biotechnology, and more.¹¹

The liberalizations ended with Biden, who declared them "harmful policies and directives that threaten to frustrate the Federal Government's ability to confront ... problems."¹² This included the issuing of a directive to departmental and agency heads to "modernize and improve the regulatory review process" in order to ensure it "fully accounts for regulatory benefits that are difficult or impossible to quantify, and does not have harmful anti-regulatory or deregulatory effects."¹³ With this move, the Office of Management and Budget (OMB), which previously was nominally charged with regulatory supervision, has been transformed into a regulatory promoter, amplifier, and initiator. Biden's "Modernizing Regulatory Review" memorandum replaced what minor regulatory oversight had existed with a mechanism to "promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations."¹⁴

Along with the erosion of regulatory oversight, Biden's executive actions have included federal support of unionization and collective bargaining and reinstatement of Obama-era housing and science policies. In addition, Biden's "equity" policies regarding race and sex, calling for "bold and ambitious steps to root out inequity from our economy" are embedded in every other aspect of his administration's agenda.¹⁵ Some of Biden's directives are noted in Box 1.

Box I. Prominent Biden Executive Actions Reaffirmed Federal Interventionism in 2021

Presidential Memoranda

- Presidential Memorandum, Preserving and Fortifying Deferred Action for Childhood Arrivals, January 21, 2021.¹⁶
- Presidential Memorandum, Modernizing Regulatory Review, January 26, 2021.¹⁷
- Presidential Memorandum, Memorandum to Extend Federal Support to Governors' Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States, January 28, 2021.¹⁸
- Presidential Memorandum, Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, January 29, 2021.¹⁹
- Presidential Memorandum, Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States, January 29, 2021.²⁰
- Presidential Memorandum, Maximizing Assistance From the Federal Emergency Management Agency to Respond to COVID-19, February 5, 2021.²¹
- Presidential Memorandum, Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking, February 10, 2021.²²
- Presidential Memorandum, Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons around the World, February 26, 2021.²³
- Presidential Memorandum, Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, May 21, 2021.²⁴
- Presidential Memorandum, Protecting Women's Health at Home and Abroad, June 24, 2021.²⁵
- Presidential Memorandum, Maximizing Assistance to Respond to COVID-19, August 20, 2021.²⁶
- Presidential Memorandum, Ensuring a Safe Return to In-Person School for the Nation's Children, August 23, 2021.²⁷
- Presidential Memorandum, Maximizing Assistance to Respond to COVID-19, November 17, 2021.²⁸
- E.O. 13987, Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security, January 25, 2021.³¹
- E.O. 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, January 25, 2021.³²
- E.O. 13989, Ethics Commitments by Executive Branch Personnel, January 25, 2021.³³
- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, January 25, 2021.³⁴
- E.O. 13991, Protecting the Federal Workforce and Requiring Mask Wearing, January 25, 2021.³⁵
- E.O. 13992, Revocation of Certain Executive Orders Concerning Federal Regulation, January 25, 2021.³⁶
- E.O. Ensuring a Data-Driven Response to COVID-19 and Future High-Consequence Public Health Threats, January 25, 2021.³⁷
- E.O. 13995, Ensuring an Equitable Pandemic Response and Recovery, January 26, 2021.³⁸
- E.O. 13996, Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats, January 26, 2021.³⁹
- E.O. 13997, Improving and Expanding Access to Care and Treatments for COVID-19, January 26, 2021.⁴⁰
- E.O. 13998, Promoting COVID-19 Safety in Domestic and International Travel, January 26, 2021.⁴¹
- E.O. 13999, Protecting Worker Health and Safety, January 26, 2021.⁴²
- E.O. 14000, Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers, January 26, 2021.⁴³
- E.O. 14001, A Sustainable Public Health Supply Chain, January 26, 2021.⁴⁴
- E.O. 14002, Economic Relief Related to the COVID-19 Pandemic, January 26, 2021.⁴⁵
- E.O. 14003, Protecting the Federal Workforce, January 27, 2021.⁴⁶
- E.O. 14004, Enabling All Qualified Americans to Serve Their Country in Uniform, January 28, 2021.⁴⁷
- E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers, January 28, 2021.⁴⁸
- E.O. 14006, Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities, January 29, 2021.⁴⁹

Executive Orders

- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government, January 25, 2021.²⁹
- E.O. 13986, Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census, January 25, 2021.³⁰

- E.O. 14007, President's Council of Advisors on Science and Technology, February 1, 2021.⁵⁰
- E.O. 14008, Tackling the Climate Crisis at Home and Abroad, February 1, 2021.⁵¹
- E.O. 14009, Strengthening Medicaid and the Affordable Care Act, February 2, 2021.⁵²
- E.O. 14010, Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, February 5, 2021.⁵³
- E.O. 14011, Establishment of Interagency Task Force on the Reunification of Families, February 5, 2021.⁵⁴
- E.O. 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, February 5, 2021.⁵⁵
- E.O. 14013, Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration, February 9, 2021.⁵⁶
- E.O. 14015, Establishment of the White House Office of Faith-Based and Neighborhood Partnerships, February 18, 2021.⁵⁷
- E.O. 14016, Revocation of Executive Order 13801 (Expanding Apprenticeships in America), February 23, 2021.⁵⁸
- E.O. 14017, America's Supply Chains, March 1, 2021.⁵⁹
- E.O. 14018, Revocation of Certain Presidential Actions, March 1, 2021.⁶⁰
- E.O. 14019, Promoting Access to Voting, March 10, 2021.⁶¹
- E.O. 14020, Establishment of the White House Gender Policy Council, March 11, 2021.⁶²
- E.O. 14021, Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity, March 11, 2021.⁶³
- E.O. 14023, Establishment of the Presidential Commission on the Supreme Court of the United States, April 14, 2021.⁶⁴
- E.O. 14025, Worker Organizing and Empowerment, April 29, 2021.⁶⁵
- E.O. 14026, Increasing the Minimum Wage for Federal Contractors, April 30, 2021.⁶⁶
- E.O. 14027, Establishment of the Climate Change Support Office, May 12, 2021.⁶⁷
- E.O. 14028, Improving the Nation's Cybersecurity, May 17, 2021.⁶⁸
- E.O. 14029, Revocation of Certain Presidential Actions and Technical Amendment, May 19, 2021.⁶⁹
- E.O. 14030, Climate-Related Financial Risk, May 25, 2021.⁷⁰
- E.O. 13031, Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, June 3, 2021.⁷¹
- E.O. 14032, Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China, June 7, 2021.⁷²
- E.O. 14034, Protecting Americans' Sensitive Data from Foreign Adversaries, June 11, 2021.⁷³
- E.O. 14035, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, June 30, 2021.⁷⁴
- E.O. 14036, Promoting Competition in the American Economy, July 14, 2021.⁷⁵
- E.O. 14037, Strengthening American Leadership in Clean Cars and Trucks, August 10, 2021.⁷⁶
- E.O. 14041, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Historically Black Colleges and Universities, September 9, 2021.⁷⁷
- E.O. 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, September 14, 2021.⁷⁸
- E.O. 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, September 14, 2021.
- E.O. 14045, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, September 16, 2021.⁷⁹
- E.O. 14049, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities, October 14, 2021.⁸⁰
- E.O. 14050, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans, October 22, 2021.⁸¹
- E.O. 14051, Designation to Exercise Authority over the National Defense Stockpile, November 3, 2021.⁸²
- E.O. 14052, Implementation of the Infrastructure Investment and Jobs Act, November 18, 2021.⁸³
- E.O. 14053, Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People, November 18, 2021.⁸⁴
- E.O. 14055, Nondisplacement of Qualified Workers Under Service Contracts, November 23, 2021.⁸⁵
- E.O. 14056, National Space Council, December 3, 2021.⁸⁶
- E.O. 14057, Catalyzing Clean Energy Industries and Jobs through Federal Sustainability, December 13, 2021.⁸⁷
- E.O. 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, December 16, 2021.⁸⁸

No matter who is president, and regardless of the makeup of Congress, the federal government increasingly influences society through regulation as well as spending, and increasingly, spending is itself regulatory, having long since replaced what otherwise would have been private functions and duties. While it should be routine for policy makers to track and disclose regulatory costs and perform periodic housecleaning, such accountability and streamlining are the exception rather than the rule, while the limited cost-benefit analysis undertaken by agencies relies largely on agency self-reporting and covers only a fraction of rules.⁸⁹ Regulators are reluctant to acknowledge when a rule's benefits do not justify its costs.⁹⁰ In fact, given the current circumstance, in which even the overseers at OMB are directed to regulate rather than police regulation.

The regulatory impulse has been fueled by Congress' longstanding delegation of its lawmaking power to executive branch regulatory agencies—and by its overbroad assumption of lawmaking power over citizens' lives in the first instance. Reforms advancing accountability could begin with requiring congressional votes on significant or controversial agency rules before they become binding on the public, thereby getting lawmakers on the record as supporting or opposing specific rules and affirming a principle of “no regulation without representation.”⁹¹

Other reforms could include annual regulatory transparency report cards, similar to the presentation in *Ten Thousand Commandments*, to distill information for the public and policy makers about the scope of the regulatory state.⁹² While scattered government and private data exist on the numbers of regulations issued by agencies and their costs and effects, the vast sweep of unknown costs of intervention need cataloging to shed light on the unappreciated extent of the federal regulatory enterprise.

This 2022 edition of *Ten Thousand Commandments* is the latest in an annual series that examines the scope of the federal regulatory state to help illustrate the need for transparency, disclosure, and congressional

accountability. This report contains six major elements:

1. Highlights in regulatory trends.
2. An overview of some of the ways the Biden administration has overturned Trump administration attempts to ease the pace of new regulations and roll back old ones.
3. An overview of the scope of the federal regulatory state, including a taxonomy of categories of unmeasured costs of regulation and depictions of its size compared with federal budgetary components and gross domestic product (GDP).
4. An analysis of trends in the numbers of rules and regulations issued by agencies, based on information provided in the *Federal Register* and in “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” and a brief survey of executive branch memoranda, notices, and other “regulatory dark matter.”
5. Recommendations for reform that emphasize disclosure and improving congressional accountability for rulemaking.
6. An appendix containing historical tables of regulatory trends over past decades.

For the economic health and stability of a nation confronting inflation, supply-chain disruptions, debt, and other self-inflicted wounds, the regulatory process should be made as transparent as possible and should be brought under greater democratic accountability and constitutional norms. Some highlights from the report follow.

- Overall final rule counts remained historically low at the conclusion of Biden's first calendar year, with the calendar year count of 3,257 rules containing 105 Trump “midnight” rules among them. However, Trump's rule counts also contained some deregulatory elements, and Biden's significant rules in the pipeline appear destined to return to pre-Trump

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levels, exceeding all Trump years except the last.

- Biden's repudiation of the Trump deregulatory agenda is thorough. While the Trump administration claimed to have met internal goals of implementing a "one-in, two-out" process for rules and freezing costs, the longer-term horizon revealed resistant agencies poised to unleash substantially more regulatory actions than deregulatory ones. That impulse is now unleashed via Biden's directives to agencies.
- Biden's expansion of an equity agenda changes the nature of the debate over the regulatory state.
- Given the limited available federal government data and reports, and contemporary studies—and the federal government's failure to provide a regularly updated estimate of the aggregate costs of regulation—this report employs a placeholder estimate for regulatory compliance and economic effects of federal intervention of \$1.927 trillion annually. It does so for purposes of context and rudimentary comparison with federal spending and other economic metrics. The figure is updated slightly from prior years with OMB *Report to Congress* editions that became available in 2021 providing some limited cost information for some rules. This report also presents an outline of the sweep of intervention and policies that belong in any tally but for which costs are disregarded and unfathomed.
- Much of the economic and social intervention entailed in pandemic mitigation measures and in the Biden spending agenda will never show up as costs of regulation in the formats that purport to address or score them, the Report to Congress on Regulatory Benefits and Costs and the Unified Agenda. Both already provide only partial overviews and are chronically late besides.
- Federal spending topped \$6.5 trillion in 2020, then surged to \$6.822 trillion in 2021 with COVID-related spending and bailout efforts. These federal outlays are projected to reach \$5.872 trillion in fiscal year (FY) 2022. The burden of regulatory regulation is equivalent to 33 percent of these projected federal outlays.
- Regulatory costs of \$1.927 trillion amount to 8 percent of U.S. gross domestic product, which was estimated at \$23.99 trillion for 2021 by the Commerce Department's Bureau of Economic Analysis.
- When regulatory costs are combined with federal outlays of \$6.822 trillion in 2021, the federal government's share of the entire economy reached at least 36 percent (30 percent is the typical figure; state and local spending and regulation would add to these).
- If it were a country, U.S. regulation would be the world's eighth-largest economy (not counting the United States itself), ranking behind France and ahead of Italy.
- The regulatory hidden "tax" exceeds individual income taxes, estimated at \$1.705 trillion for 2021. It rivals individual and corporate federal income tax receipts combined, estimated at \$1.973 trillion in 2021 (\$1.707 trillion in individual income tax revenues and \$268 billion in corporate income tax revenues).
- Regulatory costs rival corporate pretax profits of \$2.18 trillion.
- If one assumed that all costs of federal regulation flowed all the way down to households (131 million "consumer units"), U.S. households would "pay" \$14,684 annually on average in a hidden regulatory tax. That amounts to 17 percent of the average pretax income of \$84,352 and 24 percent of the average expenditure budget of \$61,334. The regulatory "tax" exceeds every item in the household budget except housing. That means that a typical American household "spends" more on embedded regulation than on health care, food, transportation, entertainment, apparel, services, or savings.
- Trump's total of 2,964 final rules in 2019 was the lowest count since records began being kept in the 1970s and is the only tally below 3,000. (In the 1990s

and early 2000s, rule counts regularly exceeded 4,000 annually.) An additional 202 Trump administration rules were added between New Year's Day 2021 and Biden's inauguration.

- A subset of rules are deemed “significant,” of which there were 387 in calendar year 2021, compared to 462 in 2020 (some deregulatory). Trump's three other years produced record-low levels of significant rules, so Biden's return to pre-Trump levels will bear watching.
- During calendar year 2021, while agencies issued those 3,257 rules (some of them deregulatory), Congress enacted “only” 143 laws. Thus, agencies issued 23 rules for every law enacted by Congress. This “Unconstitutionality Index”—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the entrenched delegation of lawmaking power to unelected agency officials. The average ratio over the past 10 years is 26.
- In 2017, Trump's first year, the *Federal Register* finished at 61,308 pages, the lowest count since 1993 and a 36 percent drop from President Barack Obama's 95,894 pages, which at the time was the highest level in history.
- The 2021 *Federal Register* contained 74,532 pages, dropping from 86,356 pages in 2020, which stands as the second-highest count ever. However, Trump's rollbacks of rules—and historically there are still fewer rules overall—also necessarily add to rather than subtract from the *Register*. All other Trump years were below Biden's count. Biden's count may drop slightly as the National Archives adjusts the *Federal Register* for skips and blanks.
- Since 1993, when the first edition of *Ten Thousand Commandments* was published, agencies have issued 114,821 final rules (this does not include guidance documents). Since the *Federal Register* first began itemizing them in 1976, 211,911 final rules have been issued.
- Of 95,848 final rules issued since the Congressional Review Act passed in 1996 under President Bill Clinton, revocations of just 20 rules have occurred, including one guidance document not published in the *Federal Register*.
- The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, D.C., jointly estimate that agencies spent \$78 billion in fiscal year 2020 to administer and police the federal administrative apparatus. These amounts are embedded in the federal budget, so are separate from compliance, economic, and other burdens of federal intervention.
- At the end of calendar year 2021, 2,094 proposed rules had been published in the *Federal Register*, 272 of them deemed significant, which the federal government defines as those rules having annual economic effects of \$100 million or more. The 2,149 proposed rules issued in 2020 was Trump's highest count, while Trump's 1,834 in 2017 was the all-time low. Obama's lowest count was 2,013 in 2009, his first year in office.
- Alongside the 3,257 rules finalized in calendar year 2021, there is also the flow in the pipeline itself to consider. According to the fall 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, 68 federal departments, agencies, and commissions have 3,777 regulatory actions in the pipeline at various stages of implementation (recently completed, active, and long-term stages), as follows:
 - 2,678 rules in the active phase
 - 475 completed rules
 - 624 long-term rules
- By contrast, Trump had a higher count of 3,852 rules, but 653 of them had been deemed “deregulatory” via Trump's since-repealed Executive Order 13771 for a lower “net.” The breakdown was as follows:
 - 2,636 rules in the active phase, 496 deemed deregulatory
 - 630 completed rules, 101 deemed deregulatory
 - 586 long-term rules, 56 deemed deregulatory

The Biden administration's spring and fall 2021 editions of the Unified Agenda of Regulatory and Deregulatory Actions contained a combined 105 completed "economically significant" rules.

- Of the 3,777 regulations in the 2021 Agenda's pipeline (completed, active, and long-term stages), 295 are "economically significant" rules. Of 261 economically significant rules in 2020 under Trump, 36 had been deemed deregulatory (14 just completed, 20 active, and two long-term).
- The Biden administration's spring and fall 2021 editions of the Unified Agenda of Regulatory and Deregulatory Actions contained a combined 105 completed "economically significant" rules. The count was 97 in 2020 under Trump, with 21 of those deemed deregulatory. The yearly average for Barack Obama's eight years was 69; George W. Bush's average over his term was 49. Trump's average was 72, but his Agendas are the first and only to contain rules expressly designated deregulatory.
- During calendar year 2021, the Government Accountability Office (GAO) noted 98 finalized "major" rules—a category similar to but broader than the economically significant tally in the Unified Agenda. President George W. Bush's administration averaged 61 major rules annually in eight calendar years. President Obama's administration averaged 84. Obama's eight years accounted for 675 major rules, compared with Bush's 492. Trump's four-year total was 343 for an average of 86, but a significant portion were deemed deregulatory. (These tallies emphasize calendar year, and therefore ignore pre-inauguration days attributable to a predecessor in transition years. They also reflect retroactive changes that have occurred in GAO's online database.)
- Of the 3,777 rules and regulations in the fall 2021 pipeline, 693 affect small businesses, up from 635 under Trump, of which 83 had been deemed deregulatory. Of Biden's 693, 354 required a Regulatory Flexibility Analysis, which is an official assessment of small-business impacts. An additional 339 were otherwise noted by agencies to affect small businesses in some fashion.
- The five most active rule-producing executive branch entities—the Departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services—account for 1,528 rules, or 40 percent of all rules in the Unified Agenda pipeline. The top five most active independent agencies account for another 341 rules.
- Biden issued 77 executive orders in 2021; Trump issued 16 before Biden's inauguration, for a total of 93. For comparison, President Trump issued 69 executive orders in 2020. (Trump had issued 47 E.O.s in 2017, 35 in 2018, and 63 in 2019).
- From the nation's founding through 2021, more than 15,582 executive orders have been issued (numbering of them is a more recent phenomenon). President Obama issued a total of 276, similar to President George W. Bush's 291. Before the 20th century, most presidents had issued no more than a few dozen. In contrast, Woodrow Wilson issued 1,803, Calvin Coolidge issued 1,204, and Franklin D. Roosevelt issued 3,467.
- There were 31 presidential memoranda that appeared in the *Federal Register* database in 2021, 26 of which were from Biden, and five from Trump. This compares to 59 from Trump in 2020 (after having issued 26, 30, and 38 from 2017–2019, respectively).
- George W. Bush issued 131 memoranda during his presidency that were published in the *Federal Register*, Barack Obama issued 257, and Trump 152.
- Public notices in the *Federal Register* normally exceed 21,000 annually, with uncounted guidance documents and other proclamations with potential regulatory effect among them (other guidance documents are issued that do not appear in the *Register* at all). In 2021, 21,985 notices were issued based on the *Federal Register* database, compared to 22,480 in 2020. There have been 661,090 public notices since 1994 and over 1 million since the 1970s.

Biden’s Regulatory “Modernization” Expanding Government Affirms the Unworkability of Administrative State Rule

Where recent editions of *Ten Thousand Commandments* began by surveying of approaches the Trump administration took to streamline red tape as well as of Trump’s own moves undermining that goal, this 2022 edition showcases Biden’s reversal and return to activist government (see Box 2).⁹³

Biden’s Repudiation of the Trump Streamlining Agenda

Even during the four years of the Trump administration, the limitations of solo executive branch streamlining, despite being prioritized, were apparent. The former president’s “one-in, two-out” Executive Or-

der 13771⁹⁴ met a resistant career bureaucracy. Agencies and progressive advocacy groups got their wish with the arrival of Biden. Whereas Trump’s infamous one-in, two-out executive order appeared a week after his inauguration, dozens of new directives were prepared in advance and issued during Biden’s first week (see Box 1).

Biden’s first acts included a presidential memorandum repudiating the Trump agenda. The January 20, 2021 “Modernizing Regulatory Review” directive dispenses not only with Trump’s “harmful” programs but also with the historical approach of review and oversight by the White House Office of Information and Regulatory Affairs (OIRA).⁹⁵ These

Box 2. Biden’s Expansion of Federal Government Economic and Social Controls

- Repudiation of the Trump streamlining agenda
 - “Whole-of-government equity”: spending, regulatory interventions and sub-regulatory guidance to advance an “equity” agenda characterized by differential treatment under law based on group membership
 - Erosion of public disclosure of regulations and guidance documents
 - “Whole-of-government” climate and environmental activism at an economy-transforming scale that threatens access to energy, fused with equity, “competition,” and “Build Back Better” agendas
 - “Competition policy,” consisting of antitrust and other regulation, covering areas from agriculture to high tech. Similar prior interventions aggravated business uncertainty and supply disruptions, increased consumer prices, and undermined wealth creation
 - Industrial policy efforts and distortionary large-scale infrastructure spending and subsidies with broad regulatory effect, in areas from routine infrastructure to frontier sectors like next-generation networks of vehicle charging stations, artificial intelligence, and basic science investment
 - Pandemic health mandates that both cost business and suppress voicing of dissenting opinions on private online platforms
 - Pandemic-induced escalation of surveillance
 - Inflation Reduction Act and attendant regulation and sub-regulatory dark matter
- There is ample debate over the administrative state regarding how to make things work better. This pursuit is increasingly unhelpful as the central government assumes more power. The administrative state needs fundamental challenge, and Congress’ own power needs bounds. This discussion is offered in the spirit of reforms to consider at the congressional level and the lessons they may entail for a future reform-minded administration.

were replaced with the pursuit of benefits as so deemed by progressive appointees, resulting in an implicit repudiation of even Clinton-era Executive Order 12866's prior art of ensuring that benefits "justify" costs before regulating.

"Modernizing Regulatory Review" instructs the Director of OMB, in consultation with departments and agencies, to develop

... a set of recommendations for improving and modernizing regulatory review. These recommendations should provide concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations.⁹⁶

It also revised OMB's review process to "fully account ... for regulatory benefits that are difficult or impossible to quantify, and [avoid] harmful anti-regulatory or deregulatory effects." The memo not only has no mention of regulatory costs, but also calls for regulatory review that "serves as a tool to affirmatively promote regulations" and for regulators to "consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits."⁹⁷

That means that rather than act as a watchdog (albeit never having been that strong of one), OIRA is to help write and lobby for new regulations. The question of whether or not to regulate is posed such that the answer will always be in the affirmative. Agencies are being unleashed to issue guidance, memoranda, notices, circulars, bulletins, letters, interpretations, and so on.

In contrast, under Trump, agencies like the Federal Communications Commission (FCC), Environmental Protection Agency (EPA), and Consumer Financial Protection Bureau were led by pro-liberalization appointees. The entire executive branch at one

point operated under an instruction from then-OMB director Mick Mulvaney that deregulation should be their "highest priority," but the permanent bureaucracies were biding their time.⁹⁸ In the blink of a political eye, that same OMB affirmed in the spring 2021 Regulatory Agenda that the highest priority is "to build back better and more equitably."⁹⁹ With Biden, the twice-yearly "Unified Agenda of Federal Regulatory and Deregulatory Actions"¹⁰⁰ takes a leap backward in oversight and a leap forward in activist central government, with OIRA pointedly digging at the prior administration:

[T]he Unified Regulatory Agenda continues rolling back the obstacles to recovery, equity, and sustainability that the prior Administration put in place. ... The last four years offered a clear lesson on what happens when the Executive Branch fails to uphold its responsibility to protect the American people.¹⁰¹

The same sentiments were echoed in the fall 2021 Agenda, which further delivered on Biden's call for mobilization and shifting of gears to activism.¹⁰² In announcing the fall 2021 "Regulatory Plan and Unified Agenda" in December, OMB proclaimed its engagement in reinforcing regulation. It titled the statement accompanying the release "A Regulatory Plan to Continue Building Back Better," avowing: "This Administration is using every lever at its disposal—including regulatory action—to deliver on the President's priorities, including containing the pandemic, driving a durable economic recovery, advancing equity, and combating climate change."¹⁰³

Similar language was contained in the Fall 2021 Regulatory Plan: "Between this regulatory agenda and the next one in spring 2022, agencies will also be developing plans for implementing the Infrastructure Investment and Jobs Act (IIJA), historic legislation to rebuild crumbling infrastructure, create good paying jobs, and grow our economy."¹⁰⁴

The introduction to the fall Agenda further captured the shift to an equity agenda

activism: “We are proud to shine a light on the regulatory agenda as a way to share with the public how the themes of equity, prosperity and public health cut across everything we do.”¹⁰⁵

Regulatory plans have always contained agency boasts and slippery goals that tend in the direction of more government, but the aggressiveness and disdain of other views is new. The seeds for what is happening now were sown with the replacement of the regulatory review stipulation in Reagan’s E.O. 12291¹⁰⁶ that potential benefits “outweigh” potential costs, with that in Clinton’s E.O. 12866 that regulatory benefits that “justify” costs.

There is a certain futility to streamlining efforts centered at the executive branch. The administrative state’s lack of accountability, incompatibility with limited government, and bias toward government growth is apparent in the rulemaking process itself.

The 1946 Administrative Procedure Act requires adherence to a public notice-and-comment process for issuing a new rule, but also for rolling back rules. However, the act also allows latitude to expand regulation via a “good cause” exemption when agencies deem notice and comment to be “impracticable, unnecessary, or contrary to the public interest.”¹⁰⁷ Agencies are fond of using good cause, but primarily to add, not subtract. Meanwhile, Trump’s attempts at recodification of some rules, such as the Waters of the United States¹⁰⁸ and Clean Power Plan rules,¹⁰⁹ or even the creation of a new, better-working product class for dishwashers¹¹⁰ were years-long endeavors that are being undone by the Biden administration. Furthermore, under the judicial philosophy of *Chevron* deference, courts typically yield to agencies’ “rational basis” interpretations of the enabling statutes under which they write their rules.”¹¹¹

Corporations, too, pursue or get enticed by subsidies and regulations that hobble competitors, but also indicate in some instances that they never wanted regulatory

reductions in the first place.¹¹² Among these latter one finds, for example, an embrace of the rent-seeking environmental, social, and governance (ESG) agenda.¹¹³ Following are a few additional ways Biden has reversed some instances of Trump’s regulatory streamlining.

Elimination of Streamlining via the Congressional Review Act. Biden got help from the Democratic Congress in overturning three of Trump’s already enacted streamlining rules using the Congressional Review Act.¹¹⁴ This law enables Congress to reach back to rules 60 legislative days old, and has been used only 17 times since its 1996 passage. The 2021 overturns involved a “true lender” rule involving national banks and savings associations (S.J. Res. 15) from the Comptroller of the Currency,¹¹⁵ an Equal Employment Opportunity Commission rule related to the commission’s conciliation procedures (S.J. Res. 13); and a methane rule from the Environmental Protection Agency (S.J. Res 14).

COVID-19 Relief Overturned. Trump’s Executive Order 13924 on “Regulatory Relief to Support Economic Recovery,” which enabled limited use of emergency powers to aid COVID-19 relief and economic recovery was revoked in February 2021.¹¹⁶ The idea then had been to extend the already underway medical crisis regulatory relaxation approach, and apply it to relieving the economic crisis response more generally. This approach aimed at making some temporary regulatory suspensions permanent.¹¹⁷ E.O. 13924 suspended penalties, eased permitting, and allowed regulatory leniency for businesses exhibiting “good faith” compliance efforts.¹¹⁸ Also withdrawn were the Food and Drug Administration’s (FDA) pre-market notification exemptions for certain classes of medical devices that were relaxed during the pandemic.¹¹⁹ The economic relief order Biden did issue consisted not of business relief but of easing access to government relief spending programs.¹²⁰

To be fair, Biden did ultimately retain COVID-related limited earnings-retention requirements for credit unions (anticipat-

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ing the deposit of stimulus checks),¹²¹ letting truckers drive more hours, and allowing teenage “next generation” truck drivers in response to supply chain disruptions. Promotion of the Coronavirus Aid, Relief, and Economic Security (CARES) Act-based rural telehealth funding continued, but this was unsurprising, as it entails federal oversight of a new program that can be expanded later.¹²² Biden also relaxed some trade restrictions on European steel and aluminum, but tariffs on Chinese goods remain. Although not a COVID-related action, the FDA also issued a rulemaking to make certain hearing aids available over the counter.¹²³ This effectively completes Biden’s 2021 regulatory streamlining inventory.

Environmental Regulatory Easing Revoked. Some of Trump’s energy-, environment-, and infrastructure-related orders were revoked in Biden’s “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” directive, which also revoked the permit for the Keystone XL pipeline. Of Trump’s environmental regulatory rollbacks,¹²⁴ there were 104 actions specifically listed by Biden for review and restoration, the bulk from the Environmental Protection Agency and Departments of Energy and the Interior.¹²⁵ Biden rejoined the Paris climate agreement¹²⁶ from which Trump had disengaged;¹²⁷ prepared a separate treaty submission on “super pollutants,”¹²⁸ and recommended resurrected moratoria and price increases for oil and gas leasing on public lands¹²⁹ while appealing to OPEC to boost production¹³⁰ and later releasing 50 million barrels of oil from the Strategic Petroleum Reserve.¹³¹

The Biden administration is also restoring “social cost of carbon” and nitrous oxide and methane emission evaluation processes to put a price on “damages associated with incremental increases ... to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services.”¹³² These measures will enable federal regulators to exaggerate the “social benefits of reducing greenhouse gas emissions.”¹³³ Biden’s EPA

and National Highway Traffic Safety Administration (NHTSA) restored California’s ability to institute stricter vehicle emission standards under the Clean Air Act, a waiver that had been withdrawn under Trump.¹³⁴ Obama-era mercury rules are also being reinstated.¹³⁵ Also under “re-revision” are the Interior Department’s Fish and Wildlife Service rules defining “habitat” as well as which habitats are considered “critical.”¹³⁶ Perhaps the cherry on top was restoration of Bears Ears and Grand Staircase-Escalante national monuments over the objections of Utah’s own congressional delegation.¹³⁷

On the energy conservation front, regulatory easing under Trump was reversed and new pursuits launched that, as the Competitive Enterprise Institute’s Ben Lieberman puts it, present a regulatory burden for every room in the house to such an extent that, “By one estimate, a forced switch away from natural gas [to electric appliances] would cost the average household \$750 to \$910 annually in higher energy bills.”¹³⁸ The Biden administration even undid Trump’s showerhead deregulation.¹³⁹

Labor Regulatory Easing Revoked. “Re-reversals” by the Department of Labor (DOL) included overtime pay, a “joint employer standard” on working conditions, and revocations of employers’ options to pay tipped employees less per hour.¹⁴⁰ The DOL also issued a final rule raising the hourly wage that federal contractors pay to workers to \$15, implementing an April 2021 executive order.¹⁴¹

To be sure, Trump displayed plenty of regulatory impulses, some shared by Biden. For example, Trump’s proclivity for trade restrictions and “Buy American” preferences, spending of trillions on infrastructure, zeal for antitrust and media regulation, selective calls for price controls and transparency, and affinity for federal lands holdings moratoria on oil and gas drilling¹⁴² and for industrial and social policy are impulses shared by Biden.¹⁴³

We enter a new era now, though. Whereas Barack Obama unapologetically wielded the

“pen and phone” to expand federal reach over private affairs,¹⁴⁴ Joe Biden promised a “whole-of-government” approach to the climate “crisis”¹⁴⁵ and to an equity agenda, the American Rescue Plan,¹⁴⁶ American Jobs Plan,¹⁴⁷ bipartisan infrastructure law,¹⁴⁸ and Build Back Better. More regulations and interventions are noted in Box 2.

Biden’s “Whole-of-Government” “Equity” Agenda Advances Unequal Treatment of Citizens in Spending and Regulation

Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

—E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities through the Federal Government,” January 25, 2021¹⁴⁹

Trump executive actions concerning social policy were revoked like the rest. One can legitimately argue that such matters should be left to states and localities, but the Biden administration is putting the nation in a different position with respect to their federalization and the inability of those citizens who disagree to escape programs implementing them or being required to fund them. In a December 2021 update on its E.O. 13985 “whole-of-government” approach to the equity agenda, the Biden administration boasted:

From the first day in office and every day since, the Biden-Harris Administration has taken a historic

approach to advancing racial equity, including directing every agency across the whole of the federal government to address the lasting impacts of systemic racism.¹⁵⁰

Equity in this framing does not mean equality of opportunity; it means equality of outcomes, which requires mandates and regulations.

The federal government’s treating of Americans as members of groups rather than as individuals has far-reaching implications for regulation and the prospects for limited government in the United States. Today’s developments embody a national manifestation and an activist choosing of sides by the federal government with respect to events unfolding at the local level on issues like gender identity and use of restroom facilities. Policies regarding the latter had been notoriously set forth in controversial guidance documents and decrees from federal departments during the Obama administration.¹⁵¹ For example, in its July 2021 *Study to Identify Methods to Assess Equity: Report to the President*, the Office of Management and Budget declared that, “Progress towards equity requires both a sprint and a marathon.” This report was prepared in response to Biden’s E.O. 13985 on “Advancing Racial Equity and Support for Underserved Communities through the Federal Government.”¹⁵²

The Department of Education in 2021 sought comment on its preference for taxpayer grant prioritization for the training of teachers and students to favor the potential awardee’s embrace of *The New York Times’s* 1619 Project and the “anti-racism” work of author Ibram X. Kendi. In the 2021 *Federal Register* on page 20,349, the department appealed to an “ongoing national reckoning with systemic racism” and the “urgency of improving racial equity throughout our society, including in our education system” to prioritize grant applications that “[t]ake into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.”¹⁵³

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At the Department of the Interior, place names across the nation deemed derogatory are to be stricken.¹⁵⁴ Confederate statues are one thing, but the writing is on the wall that Washington, Jefferson, and Lincoln might become targets, too.¹⁵⁵ The issue in this context is not whether renaming something is a good or bad idea, but that if such decisions cannot be made locally, then few can.

Both the American Rescue Plan and the bipartisan infrastructure bill in part advance equity goals through federal procurement preferences. For example, Transportation Secretary Pete Buttigieg has promised program-by-program equity-based allocation of “clean” infrastructure funding justified in part by the “racism that went into [prior] design choices.”¹⁵⁶ In pursuit of that, one finds a November 2021 Federal Highway Administration information request regarding guidance it intends to issue, that proclaims: “The recently enacted Bipartisan Infrastructure Law invests in the deployment of electric vehicle (EV) charging infrastructure as one of many important ways to confront the climate crisis. ... [The Federal Highway Administration] is especially interested in comments suggesting ways that the guidance could promote equity in the deployment of EV charging infrastructure under these programs.”¹⁵⁷

Such policy making and spending are inherently regulatory. They pick winners and losers, and in some instances have prompted blowback, and have been struck down by courts. Pushback has included court challenges by some states to the Securities and Exchange Commission’s (SEC) approval of a Nasdaq quota and diversity rule for corporate boards.¹⁵⁸ A \$4 billion loan forgiveness program from the Department of Agriculture (USDA), under the American Rescue Plan, initially targeted nonwhite farmers.¹⁵⁹ Biden’s E.O. 13985 has induced the USDA to embark upon the open-ended pursuit of “Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities” and the establishment at USDA of a “Racial Equity Commission.”¹⁶⁰ These

kinds of programs make the scaling back of the USDA less politically possible.

2021 brought financial regulatory proposals regarding new anti-redlining rules,¹⁶¹ and increased spending in the Treasury Department’s State Small Business Credit Initiative for what the federal government deems disadvantaged groups.¹⁶²

An ironic aspect of the Biden administration’s escalation in social spending is that, in its pursuit of increased Internal Revenue Service (IRS) funding for expanded audits of tax returns, the IRS historically targets not Wall Street but those who lack the will or ability to fight back.¹⁶³ Relatedly, the Consumer Financial Protection Bureau (CFPB) issued a regulatory proposal implementing Dodd-Frank’s Section 1071, which requires lenders to collect data on the race and gender of small business loan applicants and send that data to the CFPB.¹⁶⁴

One finds a Federal Housing Finance Agency (FHFA) rule on “benchmark goals” for “single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families.”¹⁶⁵ A Department of Housing and Urban Development (HUD) “Affirmatively Furthering Fair Housing” rule that requires active integration and desegregation of neighborhoods across the nation by recipients of HUD funds has been reinstated by Biden. The rule notes that “the [Affirmatively Furthering Fair Housing] obligation requires a funding recipient to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them,” and that recipients “take proactive steps towards fair housing in this manner, beyond merely refraining from discrimination.”¹⁶⁶ The Biden administration is also reinstating a “disparate impact rule,” which as *Bloomberg* put it, “bars seemingly neutral policies in lending, renting and selling that result in discrimination.”¹⁶⁷

A federal government already deeply enmeshed in personal health care has brought the equity campaign to bear there as well,

creating among other things a COVID-19 “Health Equity Task Force” within the Department of Health and Human Services (HHS) aimed at an “Implementation Plan and Accountability Plan” for “mitigating inequities caused or exacerbated by the COVID-19 pandemic and for preventing such inequities in the future.”¹⁶⁸ Also underway is a system of Medicare bonuses for doctors that implement “anti-racism” plans and that favor “trauma-informed care” for persons of color enduring “multi-generational trauma” induced by racism. The new rule advises that doctors can boost reimbursement rates if they “Create and implement an anti-racism plan using the [Centers for Medicare and Medicaid Services] Disparities Impact Statement.”¹⁶⁹

In July 2021 HHS issued guidance as part of a broader treatment of long COVID to instruct on how symptoms could qualify as a disability under the Americans with Disabilities Act, placing individuals affected under a civil rights umbrella.¹⁷⁰ The Biden administration is also allocating billions in taxpayers’ funding for equity-related “global health programs.”¹⁷¹

Equity sympathies do not seem to extend to those affected by overregulation, however. Biden revoked a Trump directive on “Protecting Americans from Overcriminalization through Regulatory Reform.”¹⁷² A rule clarifying religious exemptions for federal contractors allowing certain discrimination was also revoked.¹⁷³ (Granted, making religious compromises is a cost of accepting federal dollars.)

Erosion of Transparency and Disclosure

Agencies’ whiplash-inducing rule reversals from one administration to the next present a stark demonstration of the unworkability of administrative state governance. In addition to specific pro-regulatory rule reversals at agencies discussed above and issuance of new regulation, 2021 brought reversals in overarching regulatory liberalization policy

and a tamping down on overseers’ ability to monitor what agencies do. Following is a nonexhaustive overview of some Biden process changes and erosions in disclosure that affect all rulemaking.

Regulated parties’ protections removed. Under Trump, agencies temporarily headed by reform-minded appointees took steps concerning “rules for rulemaking” that went beyond Trump’s umbrella two-for-one directive. They abandoned those, as well as a pandemic-phase regulatory bill of rights, a Trump executive order on “Ensuring Democratic Accountability in Agency Rulemaking”¹⁷⁴ requiring an appointee, rather than a career staffer, to sign off on rules before they become binding on the public.¹⁷⁵

“Deregulatory” rules’ designations vanished. A novel side effect of Trump’s one-in, two-out program was the need to write rules that were deregulatory, and to keep track of them. A separate search category to isolate those “Deregulatory” rules (along with a handful of other categories related to Trump’s order) was created, but vanished in early 2021.¹⁷⁶ There is, as of this writing, no readily apparent means of going back into the Office of Information and Regulatory Affairs’ Unified Agenda database’s “advanced search” function¹⁷⁷ for any given Trump year and counting up the “Deregulatory” actions for any given agency or department, whether or not they were deemed significant. Also, while agency preambles and the OMB introductions from the Trump years are retained on the Unified Agenda landing page, one can no longer find the OIRA administrator’s detailed regulatory reform reports on “one-in, two-out” from the Trump years.

Regulatory Dark Matter Unleashed. The George W. Bush–era oversight of agency guidance documents¹⁷⁸ was significantly enhanced by Trump’s October 2019 Executive Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents”¹⁷⁹ which, after initial scrubbing and rescissions of guidance that “should no longer be in effect,” initiated the development of a

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searchable indexed database at every executive branch agency for disclosure of guidance documents.¹⁸⁰ Where guidance was retained or new guidance issued, the order required affirmation of its nonbinding nature, and the development of procedures for the public to petition for revocation or alteration. Along with requirements for notice and comment and OIRA review, the order directed that “each agency shall, consistent with applicable law, finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents.” By September 2020, a number of agencies had established online portals as required by E.O. 13891 with over 70,000 documents among them.¹⁸¹ By the time Trump left office, 33 agencies had issued final rulemakings on guidance procedures regarding fairness to the public and OMB review. Some agencies, to their credit, still retain portals, but the uniformity, never fully implemented prior to the election, has been halted.

One of Biden’s first directives rescinded Trump’s executive order on guidance document portals and standardized rules regarding their issuance and disclosure. While Biden did allow for agencies to “identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process, and determine an appropriate approach with respect to the review of guidance documents,” he also directed agencies to get rid of their final rules on guidance (FROGs).¹⁸² Thirty-three FROG procedure rules were issued, as noted, and as of this writing, 20 have been “stomped” by Biden.¹⁸³ Several U.S. senators wrote to Biden on the deterioration in guidance document disclosures he caused, but a public response to the complaint has yet to appear.¹⁸⁴

With the hollowing of portals and FROG procedures and OMB review of guidance, an unleashing of regulatory dark matter appears in the offing, given the increase in new government programs and spending in the past two years.

Agencies’ Elimination of Internal Oversight and Streamlining Procedures. The rel-

ish with which agencies repudiated Trump’s guidance directive was palpable in the speed with which some adopted nearly verbatim language disavowing their prior positions in some FROG repeals.¹⁸⁵ In addition, agencies that had taken the initiative on regulatory fairness and oversight procedures under Trump have ditched them under Biden. Following are some examples:

Justice Department Elimination of Fair Guidance Directives. Well before Trump’s executive order on guidance documents, his Department of Justice (DOJ) had issued influential “guidance on guidance” regarding DOJ binding the public via sub-regulatory guidance documents.¹⁸⁶ Those directives were revoked by Biden’s Attorney General Merrick Garland, who, while noting precedent that guidance cannot impose legally binding requirements, advised that “To the extent guidance documents are relevant to claims or defenses in litigation, Department attorneys are free to cite or rely on such documents as appropriate.”¹⁸⁷

The deregulatory Trump DOJ produced the 129-page *Modernizing the Administrative Procedure Act* in 2020¹⁸⁸ and an opinion memorandum recommending application of regulatory review to independent agencies.¹⁸⁹ These are non-starters under Biden in terms of prioritization.

Environmental Protection Agency Disavowal of Transparency and Cost-Benefit Disclosures. Trump-era EPA-proposed changes with respect to improving transparency regarding the scientific evidence on which agencies rely to craft regulations¹⁹⁰ were particularly important, given the wider replication crisis in academia and science,¹⁹¹ but were vacated days after Biden entered the White House.¹⁹² Also gone is an EPA rule, “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.”¹⁹³ Biden’s EPA issued an interim final rule in May 2021 rescinding it, along with a press release entitled, “EPA Rescinds Unnecessary Benefit-Cost Rule.”¹⁹⁴ The EPA had for four years maintained its own “Deregulatory Actions” landing

page running online tallies to provide up-to-date public information on paperwork and streamlining actions. The website link still works, but has the following disclaimer:

This is not the current EPA website. To navigate to the current EPA website, please go to www.epa.gov. This website is historical material reflecting the EPA website as it existed on January 19, 2021. This website is no longer updated and links to external websites and some internal pages may not work.¹⁹⁵

Department of Transportation Rulemaking and Guidance Policies Reversal. Perhaps the most detailed processes and “rules for rules” in the Trump administration came from the Department of Transportation (DOT) under Secretary Elaine Chao, with the codification of new procedures encompassing transparency, guidance, enforcement, and due process.¹⁹⁶ These innovations (and the department’s FROG procedures) were removed in an April 2021 DOT rulemaking under Secretary Pete Buttigieg, in fulfillment of assorted Biden directives:

This final rule removes the Department’s internal policies and procedures relating to the issuance of rulemaking and guidance documents from the Code of Federal Regulations. In addition, this final rule removes regulations concerning the initiation and conduct of enforcement actions, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.¹⁹⁷

Sunsetting of Rule Sunsetting at the Department of Health and Human Services. The Department of Health and Human Services under Trump issued a detailed Regulatory Flexibility Act-based rule on setting expiration dates for certain regulations with requirements for retrospective review every 10 years to determine whether the rule has a significant impact on small entities and whether it is still needed or “redundant, overlapping,

or inconsistent.”¹⁹⁸ A proposed rule to withdraw the Trump sunset rule was issued in October 2021.¹⁹⁹

Interestingly, the Federal Communications Commission (FCC)—as an independent agency never bound by any Trump executive order—issued a January 2020 white paper enumerating steps taken on eliminating and modernizing outdated regulations.²⁰⁰ In November 2020, the FCC’s Office of General Counsel and Office of Economics and Analytics released a joint memorandum reinforcing economic analysis at titled “Legal Framework and Considerations for Regulatory Impact Analysis.”²⁰¹ As of this writing, these remain intact.

“Whole-of-Government” Environment and Climate Agenda Elevates Regulation on an Economy-Transforming Scale

Climate is heavily embedded in Biden’s executive actions, the American Rescue Plan, the infrastructure package (deemed the largest climate legislation to be enacted²⁰²), the Inflation Reduction Act, and legislation purportedly addressing competition with China.²⁰³ Biden has sought to address climate change through executive action. Rooted in hobbling domestic fossil energy development, the whole-of-government climate approach has engaged multiple departments and agencies in implementing environmental and emissions regulatory policies, along with the equity agenda, rather than in energy promotion and grid resilience.

Across the board, administration policies call for agencies to “prioritize action on climate change in their policy-making and budget processes, in their contracting and procurement, and in their engagement with State, local, Tribal, and territorial governments; workers and communities; and leaders across all the sectors of our economy.”²⁰⁴ Even the Federal Emergency Management Agency (FEMA), says in its new “strategic plan” that

Climate is heavily embedded in Biden’s executive actions, the American Rescue Plan, the infrastructure package, the Inflation Reduction Act, and legislation purportedly addressing competition with China.

“FEMA will take a people first approach to increase climate literacy, develop tools, and allocate resources informed by future risk estimates to target investments to create a more equitable and resilient nation.”²⁰⁵ In its pursuit of carbon neutrality, the administration even calls for a “Civilian Climate Corps” to:

... mobilize the next generation of conservation and resilience workers and maximize the creation of accessible training opportunities and good jobs. The initiative shall aim to conserve and restore public lands and waters, bolster community resilience, increase reforestation, increase carbon sequestration in the agricultural sector, protect biodiversity, improve access to recreation, and address the changing climate.²⁰⁶

This approach has even taken root at financial regulatory agencies. The Treasury Department now hosts a “climate hub” to decide how to address the weather with spending and tax policies.²⁰⁷ The Federal Reserve’s “Climate Change and Financial Stability” report is on task to thwart alleged risks that climate change poses to the banking system²⁰⁸ and to undertake a “climate scenario analysis” in bank stress tests to steer capital away from fossil-fuel energy.²⁰⁹ The Employee Benefits Security Administration is pursuing “amendments to the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974” to convey to fund managers “that climate change and other ESG factors are often material and that in many instances fiduciaries should consider climate change and other ESG factors in the assessment of investment risks and returns.”²¹⁰ Law professors Todd Zywicki of George Mason University and Sanjay Baghat of the University of Colorado Boulder have examined the empirical evidence on ESG and found that, rather than ESG making companies more profitable, profitable companies spend more money on ESG and divert shareholder money to enhance public reputation.²¹¹

The Department of Defense (DOD), its vast size and spending notwithstanding, has

traditionally been left out of the regulatory cost mix, though it should not be, given its procurement heft and its involvement in climate policy and artificial intelligence. A \$768 billion defense bill was just signed in December 2021²¹² to fund a DOD that sees climate change as a risk to national security and writes official reports to that effect.²¹³ In October, DOD teamed up with the General Services Administration and the National Aeronautics and Space Administration (NASA) on a proposal “to ensure that major Federal agency procurements minimize the risk of climate change.”²¹⁴ Before this latest climate-spending foray, the U.S. government was already the “world’s largest purchaser of goods and services,” to the tune of \$500 billion a year in annual contracts, according to the Small Business Administration—an extent that would be considered a monopsony if anyone else were doing it.²¹⁵

“Competition Policy”: Antitrust Regulation and Federal Action Shrink the Private Sector’s Economic Dominance

But let me be very clear: Capitalism without competition isn’t capitalism; it’s exploitation. Without healthy competition, big players can change and charge whatever they want and treat you however they want.

—President Joe Biden, remarks upon the signing of executive order on “Promoting Competition in the American Economy”²¹⁶

In July 2021, Biden issued Executive Order 14036, “Promoting Competition in the American Economy.”²¹⁷ He often castigates business “concentration” and “market power” heedless of the contradictions entailed in an interventionist agenda characterized by a central government throwing its weight around to fulfill progressive policy goals like renewable energy mandates. In January 2022, Biden and Attorney General Merrick

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Garland hosted a roundtable unveiling new pricing transparency regulation targeting meat processing, sugar production, insurance, airlines, and publishing.²¹⁸ This went beyond antitrust regulation to invoke new interpretations of industry-specific statutes.²¹⁹ Garland touted a new one-stop portal for citizens to snitch on alleged violators of the Sherman and Clayton antitrust acts.²²⁰ They also announced hundreds of millions in American Rescue Plan-based government spending in meat processing.²²¹

Large-scale government contracting and interventions in the name of competition will involve new levels of interference. Everyone from big business to contractors that happen to work with the government are increasingly facing minimum wage requirements, the promotion of “good union jobs,” and Buy American rules. Meanwhile, the administration seems oblivious to how its own climate polices are likely fueling future shortages of already politically contentious, critical rare earth elements.²²²

The Biden administration’s stance on competition views consolidation as bad in any sector that happens to catch enforcers’ attention, but not when the government exercises its powers across all sectors. Granted, Donald Trump and his Federal Trade Commission and Justice Department casually invoked antitrust action against media, telecom, “big tech” and beyond.²²³ Where Trump weighed in often against Section 230 immunities for tech platforms, Biden invoked it on the campaign and has verbally pressured tech companies as president. Where Trump’s 2019 FTC announced a “technology task force” to assess alleged antitrust violations in the sector and increase scrutiny of acquisitions,²²⁴ today’s FTC wants free hand to issue ex ante regulations.²²⁵

Bills introduced in the 117th Congress involve antitrust regulation, algorithms’ employment of user data in online advertising, even the treatment of phone-centered lifestyles and video gaming as “addiction.”²²⁶ Each camp has its own reasons for regulation, but the advantage for progressives is

that the left will control these administrative agencies, and big tech has pursued partnership regulation with them for years.²²⁷ Meanwhile, the suspicious or confused might note that the federal government procures cloud services from the same companies it regulates.

Tariffs and other trade barriers hurt Americans with direct costs, regulatory uncertainty, and market losses.²²⁸ Biden increased tariffs on Canadian lumber, raising prices for U.S. homebuilding projects.²²⁹ Biden and Trump share an affinity for trade restrictions in the form of executive orders for Buy American preferences.²³⁰

When inflation hit new highs in October 2021, Biden directed his National Economic Council to reduce rising energy costs,²³¹ and issued a letter to the independent FTC seeking a probe into alleged price gouging and anticompetitive behavior by oil and gas companies.²³² A perhaps inadvertently aptly named “Supply Chain Disruptions Task Force”²³³ sought to place the blame on the private sector over “consolidation in the shipping and rail industries,”²³⁴ higher food prices,²³⁵ and other disruptions.²³⁶ Meanwhile food supply pressure continues in 2022, from fields to shelves.²³⁷ The administration labors under misperceptions about rising prices, which in some instances have not exceeded inflation.²³⁸

Also looming are more regulations on cryptocurrencies to shape how a future economy makes and accepts payments,²³⁹ as well as to protect the government from currency competition. The Federal Reserve is even considering issuing its own central bank digital currency (CBDC), and in January 2022 released a 40-page report on CBDCs that it called “the first step in a public discussion.”²⁴⁰ The Trump administration was little different, also exploring government-run electronic payment systems designed to directly compete with private banks’ processing structures.²⁴¹ (Trump declared himself “not a fan” of cryptocurrencies.²⁴²) The Trump-era SEC sought to regulate cryptocurrencies as “securities”²⁴³ despite lacking legal jurisdic-

Tariffs and other trade barriers hurt Americans with direct costs, regulatory uncertainty, and market losses.

Large-scale central government infrastructure spending projects have massive but largely ignored regulatory effects.

tion over currencies and tokens.²⁴⁴ The Trump Treasury Department called crypto a “national security” issue.²⁴⁵ The cherries on top for those opposed to the liberation that crypto could afford to the public may be U.S. government support for a “global minimum tax” in the name of tax harmonization and flirtation with wealth taxes, thus taking away any ability to say no to governments.²⁴⁶ But again, the U.S. government’s stance is that private entities are the ones with abusive monopoly power.

The Consumer Financial Protection Bureau appears to have set its sights on regulating artificial intelligence (AI), claiming in a proposed rule issued in spring 2021: “Although use of AI holds the potential to expand credit access to underserved consumers, use of such technologies may also hold risks, including risks of unlawful discrimination and lack of transparency.”²⁴⁷

In the health sector, we see continued pharmaceutical and hospital price transparency mandates and controls. The Trump administration sought to reduce prescription drug costs with executive actions like price caps (such as on insulin and injectable epinephrine), price transparency, negotiated rates, and other mandates like tying U.S. drug prices to lower ones in other countries.²⁴⁸ Biden continues pursuing price controls²⁴⁹ such as capping monthly insulin copays at \$35²⁵⁰ and proclaiming, “I’m committed to using every tool I have to lower prescription drug costs for Americans, consistent with the drug companies getting a fair return on their investment.”²⁵¹ Such price interference will affect incentives to pursue medical and pharmaceutical research, potentially leading to fewer health-enhancing and life-saving innovations in the future.²⁵²

Industrial Policy and Large-Scale Infrastructure Spending and Regulatory Subsidies

Large-scale central government infrastructure spending projects have massive but largely

ignored regulatory effects. Grand-scale government infrastructure alters the trajectories of what should be competitive private industries engaged in mega-transactions, removing swaths of business and economic activity from competitive enterprise altogether. The bipartisan infrastructure law and Build Back Better instead doubled down on protecting siloed central regulation and regulated common carriers that for decades have artificially separated network industries like transportation and communications, neglecting the needed pursuit of ambitious multiple uses of private rights of way on land and in airspace, and likely destroyed trillions in infrastructure wealth creation.²⁵³ Parts of it have been resurrected in the recently passed Inflation Reduction Act of 2022.²⁵⁴

The year 2022 began with Biden fronting another bipartisan push, a “once-in-a-generation investment in American science, technology and innovation to help the U.S. preserve its competitive edge,”²⁵⁵ with billions of dollars in new government “investment” in basic research and to address the chip shortage and ostensibly aimed at addressing competition from China.²⁵⁶ The Senate-passed U.S. Innovation and Competition Act, once named the Endless Frontier Act, passed the House in 2022 following the failure to pass Biden’s Build Back Better legislation²⁵⁷ (The House incarnation was called the America Competes Act).²⁵⁸ On top of those new concerns, a large amount of legacy construction job category regulations are already in place,²⁵⁹ along with Buy American rules and union preferences in the American Jobs Plan.²⁶⁰ To that end, the Biden White House provided detailed advice for potential handout beneficiaries in a 460-page guidebook covering 375 programs the federal government is funding in climate, energy, transportation, and broadband.²⁶¹

Trump, too, it must be emphasized, favored trillions in government infrastructure spending²⁶² and corporate welfare and cronyism like that embodied in the Export-Import Bank,²⁶³ ethanol subsidies,²⁶⁴ and even a national 5G proposal,²⁶⁵ that has since eased into FCC

plans for subsidized rural 5G.²⁶⁶ A Trump rule to promote “accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure”²⁶⁷ is more than matched by Biden’s national electric vehicle charging network, spawned thanks in part to the bipartisan infrastructure law already being implemented by guidance document.²⁶⁸ As *The Wall Street Journal* reported in August 2021, “Private companies will be required to publish details about their products, much like nutrition labels, and offer low-cost service plans if they take federal funds to help build networks.”²⁶⁹ The Biden administration also revived efforts to impose net neutrality regulations,²⁷⁰ and the nomination of FCC commissioners to do so.²⁷¹

While some limited permitting streamlining was retained in the infrastructure bill,²⁷² the Biden administration is taking steps like removing the Trump-era Council on Environmental Quality’s relaxation of environmental review provisions of the National Environmental Policy Act. These moves will increase difficulties in expanding permitted infrastructure and projects,²⁷³ by restoring pre-Trump interpretations of “cumulative” and “indirect” environmental effects.²⁷⁴

Across-the-board federal intervention remains the prevailing mindset, undermining the prospects for private sector dominance of frontier sciences and the technologies on which future prosperity and well-being will depend.

AI offers a useful example. Under Trump, nothing approaching a laissez-faire outlook with respect to AI prevailed.²⁷⁵ Under Biden, the regulatory pursuit continues, with the White House Office of Science and Technology’s call for an “AI Bill of Rights.”²⁷⁶ This notion does not refer to protecting citizens from government’s abuse of AI to discriminate against citizens and undermine their privacy, but promotion of the equity agenda by means of procurement rules and other forms of federal oversight. This federalization is concerning enough on its own, but it is especially dangerous in the case of AI, for

which relevant policy will likely develop in an environment in which the Department of Defense funds a great deal of AI research, with the potential of displacing the private sector’s role in steering the technology.²⁷⁷

Relatedly, Trump’s establishment of the Space Force, enacted in the National Defense Authorization Act of 2020,²⁷⁸ and Biden’s embrace of it, illustrate the one-way ratcheting of government programs and their replacement of large-scale private enterprise with industrial policy.²⁷⁹ Making the Space Force a sixth branch of the armed forces will heavily influence technology investment, freedom of exploration, and commercial activities (such as asteroid mining) in a still-nascent space sector.²⁸⁰ This will not lighten the touch of already thorny space launch and reentry licensing requirements where commercial space activities have not taken root beyond NASA contracting and partnerships, and Federal Aviation Administration supervision.²⁸¹

It is within this environment that Biden, like Trump, rechartered the President’s Council of Advisors on Science and Technology (PCAST) on January 27, 2022—this time coopting it for the social, climate, and equity agendas:

PCAST shall advise the President on matters involving policy affecting science, technology, and innovation, as well as on matters involving scientific and technological information that is needed to inform public policy relating to the economy, worker empowerment, education, energy, the environment, public health, national and homeland security, racial equity, and other topics.²⁸²

In January 2022, Biden told PCAST that he was interested in hearing about its work “particularly around addressing the disparities in our public health system, meeting the threat of climate change.”²⁸³ As with infrastructure networks hampered by nearly a century of federal oversight by various agencies, it is counterproductive for the sciences

Across-the-board federal intervention remains the prevailing mindset, undermining the prospects for private sector dominance of frontier sciences and the technologies on which future prosperity and well-being will depend.

and their practical applications to proceed walled off from one another in an arbitrary legislative appropriations environment.

Pandemic Mandates Warn of Future Intimidation and Normalization of Censorship

I make a special appeal to social media companies and media outlets: Please deal with the misinformation and disinformation that's on your shows. It has to stop.²⁸⁴

—President Joe Biden,
January 13 2022

Deplatforming and debanking can be appropriate private actions, but they become censorship when encouraged by government.

For weeks, the vaccine and masking mandates to which business and the public were reacting did not actually exist, apart from Biden's press conference and media releases.²⁸⁵ Yet companies were facing pressure to get in line. Congress had the ability to issue a resolution of disapproval under the Congressional Review Act to make a statement in the early days of Biden's directive before it was turned into a written rule, but did not. Even upon the Supreme Court overturning²⁸⁶ of OSHA's vaccine-or-testing mandate ("emergency temporary standard"²⁸⁷) on businesses with 100 or more employees, Biden called on business to comply anyway.²⁸⁸ As William Yeatman of the Cato Institute noted:

By now, Congress has ceded enough policymaking initiative to render itself expendable. When Biden wants a law made, he can go it alone. All he has to do is order an agency to push the envelope of its existing authority.²⁸⁹

Unless a court steps in, eventually something will stick. In 2021, the federal government—until its mandates were overturned by courts—overruled all individuals' and medical practitioners' decisions (dismissed by media and the White House as "vaccine hesitancy"²⁹⁰) to not accept compulsory vaccination for which no recourse against

indemnified, highly profitable vaccine makers was available in case of harm or injury.²⁹¹ The FDA, meanwhile, asked for over 70 years to publicly disclose documents related to vaccine approval, but a court gave the agency eight months.²⁹² Liability and insurance concerns were a major issue in 2020, when discussions were turning to reopening and whether or not firms would be liable if workers got sick. Yet, lockdowns failed to stop the spread and "had little to no effect on COVID-19 mortality," according to a John Hopkins meta-analysis, imposing enormous costs in terms of job loss, educational delays, and psychological effects.²⁹³ There is no regulatory intervention greater than lockdown, yet it will all happen again without measures to prevent the abuse of crises.²⁹⁴

Whether in a pandemic setting or at any other time, deplatforming and debanking can be appropriate private actions, but they become censorship when encouraged by government.²⁹⁵ On the other side of the coin, the government can inappropriately compel business association. For example, the Trump administration's Office of the Comptroller of the Currency issued a "fair access to financial services" rule, a "fairness doctrine" of sorts for banks to prevent discrimination or "debanking" based on political viewpoints or activities, which can undermine financial institutions' freedom of association.²⁹⁶ In 2021, the White House enlisted tech companies in what it called a campaign to fight "misinformation" by seeking its removal from social media. July 2021 saw warnings from the surgeon general on the "urgent threat of health misinformation."²⁹⁷

Surveillance

Related to speech mandates is the normalization of surveillance, part of a broader war on anonymity that the pandemic helped globalize.²⁹⁸ Recent forays have included the noted CFPB data collection effort and a forum for reporting "anticompetitive" behavior. Early in the pandemic the Trump Centers for Disease Control instructed states to submit per-

sonal information—including names, birth dates, ethnicity, and addresses—of individuals vaccinated against COVID-19, raising alarm over a federal vaccine registry.²⁹⁹ Below are some concerning developments with respect to unwarranted intrusiveness that emerged in 2021.

- The IRS will require third-party payment processors like PayPal or Venmo to report transactions of \$600 or more.³⁰⁰ As the Motley Fool put it, “If You Make \$600 or More From Your Side Hustle in 2022, the IRS Will Know About It.”³⁰¹ Senate Minority Leader McConnell complained that “ordinary Americans” will be caught up in the “IRS Dragnet.”³⁰² Yet, McConnell did not oppose the PATRIOT Act’s surveillance that made the IRS move a more a natural development.³⁰³
- The IRS in 2021 made simultaneous moves to incorporate biometric facial recognition scans to access and view one’s tax returns.³⁰⁴ Only the public outcry that resulted led to the agency declaring in February 2022 that it will “transition away from using a third-party service for facial recognition to help authenticate people creating new online accounts.”³⁰⁵
- Policy makers view cryptocurrencies as a justification to expand surveillance and undermine anonymity. In a December 2021 letter to a U.S. senator in response to a query regarding “IRS authority to conduct compliance activity related to virtual currency,” the IRS declared, “We share your concern that virtual currencies can be used to evade compliance, and that the anonymous nature of virtual currencies may make them attractive for those who would engage in illicit activities.”³⁰⁶
- The Department of Homeland Security (DHS) issued a request for proposals to “incorporate biometric technologies to monitor employees’ health and ‘psychosocial information’” in an effort to “optimize ‘human performance and resiliency’ among the workforce.”³⁰⁷ Hefty government procurement departments

can impose requirements on contractors that can ultimately apply to ordinary businesses and their workforces. DHS already incorporates, and seeks additional, enhanced biometric collection and use in other respects.³⁰⁸

- Biden shares with Trump an interest in gun regulations and background checks that can advance government tracking of private behavior. Trump sought to respond to threats of gun violence via the monitoring and tracking of individuals with mental illness, or suspected of such, via smartphones and wearable health-monitoring devices.³⁰⁹ Similarly, announcing that “this Administration will not wait for Congress to act,” the Biden Justice Department is trying to influence states by publishing model “red flag” legislation to allow not just families but law enforcement to “petition for a court order temporarily barring people in crisis from accessing firearms if they present a danger to themselves or others.”³¹⁰ A new requirement that licensed dealers who sell firearms to the general public “must certify that they have available secure gun storage or safety devices” available for purchase as well.³¹¹ Alongside all this, federal databases of gun owners have expanded dramatically in the past year.³¹²

The above is just a sampling of 2021 surveillance highlights. Washington’s censorship impulse and the tech economy’s overlap with the surveillance state will present greater challenges in the era of centrally directed infrastructure. For example, the bipartisan infrastructure law requires that future vehicles incorporate a “safety device” that will “passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired.”³¹³ Some have called this a “kill switch” for vehicles.³¹⁴ The ability to remotely disable a vehicle is not new, of course; the question is over who does it and when. These developments have emerged in an era when recent document declassifications show U.S. intelligence agencies continue bulk data collec-

*Trump’s own
regulatory
impulses became
dominant over
his streamlining
agenda.*

tions and mishandling of American’s private information.³¹⁵

The Inflation Reduction Act’s Expansion of Spending and Regulation

Like the American Rescue Plan and the bipartisan infrastructure law, the Inflation Reduction Act legislation encompasses large swathes of the economy down to the household level. It took both parties to get to this point. One government overreach leads to a greater one later. Trump’s executive order on housing assistance and “lawful measures to prevent residential evictions and foreclosures,”³¹⁶ paved the way for Biden to do the same with a Centers for Disease Control and Prevention (CDC) notice extending an eviction moratorium in areas with high transmission rates—despite the probability of a court overturning it³¹⁷—in order to push money out fast. Biden stated: “Whether that option will pass constitutional measure ... I can’t tell you. ... There are a few scholars who say it will, and others who say it’s not likely to. But, at a minimum, by the time it gets litigated it will probably give some additional time while we’re getting that \$45 billion out

to people who are in fact behind in the rent and don’t have the money.”³¹⁸

Not infrequently, Republicans enable the broader progressive regulatory agenda.³¹⁹ A “nationwide paid family leave” plan touted by Trump in his second State of the Union address³²⁰ came to partial fruition in December 2019 in the same defense spending package that birthed the Space Force.³²¹ Shortly thereafter, the Families First Coronavirus Response Act delivered paid sick leave and family and medical leave at a time when many businesses could least afford it and would need COVID relief funds themselves.³²² The bipartisan CARES Act³²³ brought the Paycheck Protection Program with loan forgiveness provisions,³²⁴ eviction moratoria, student loan payment deferrals (extended by administration directive),³²⁵ and federally supplemented unemployment payments that help set precedent for a federal universal basic income.³²⁶ Congress rushed the CARES Act through without hearings or debates, while the White House claimed of Build Back Better that “the plan is fully paid for, is the most fiscally responsible major bill that Congress has considered in years, and reduces the deficit in the long run,”³²⁷ and that the Congressional Budget Office lacked the experience to legitimately weigh in.³²⁸

One government overreach leads to a greater one later.

Beyond a Federal “Regulatory Budget”

Federal programs get funded either by taxes or by borrowing against a promise to repay with interest from future tax collections. When Congress spends, no one questions that disclosure is necessary for voters to hold representatives accountable. Taxpayers can observe those decisions during the authorization and appropriations processes (not that it is a simple thing to do). They can inspect the costs of programs and agencies in Congressional Budget Office publications and in the federal budget’s historical tables.³²⁹ The point is, disclosure for spending exists, however difficult it may be to access specific information.

Regulation and spending are both mechanisms by which governments act or compel. Rather than taxing and paying directly, Congress often “funds” objectives with federal regulation to compel the private sector, as well as state and local governments, to bear the costs of federal initiatives. Regulation in such instances functions as an off-budget form of taxation and spending. The costs and economic effects of regulatory

compliance are not budgeted and disclosed the way that federal spending is, so regulatory initiatives can commandeer private-sector resources with relatively little public controversy.

Policy makers may find it easier to impose regulatory costs than to embark on government spending because of the former’s lack of disclosure and accountability. And when regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule.

Although disclosure of spending obviously does not stop deficits and debt, it is still vital for making progress toward those ends. Likewise, policy makers should disclose regulatory costs to the fullest extent possible so that the decision of whether to regulate can at least have an opportunity to get the full consideration it deserves.

Table 1 provides an overview of the 2021 federal regulatory enterprise to be discussed in the following pages.

Regulatory initiatives can commandeer private sector resources with relatively little public controversy.

Table I. The Regulatory State: An Overview for 2022

	Year-End 2021	1-Year Change (2020–2021)	5-Year Change (2017–2021)	10-Year Change (2012–2021)
Total regulatory costs	\$1.927 trillion	n/a	n/a	n/a
Agency enforcement budgets*	\$77.9 billion	5.5%	13.1%	20.7%
<i>Federal Register</i> pages	74,532	13.7%	21.6%	–5.6%
Devoted to final rules*	32,223	55.0%	–16.6%	22.6%
<i>Federal Register</i> final rules	3,257	–2.9%	–0.7%	–12.2%
Significant final rules	387	–16.0%	74.0%	10.0%
<i>Federal Register</i> proposed rules	2,094	–2.6%	14.0%	–16.8%
Significant proposed rules	272	–21.0%	55.0%	6.0%
Code of Federal Regulations pages^	185,984	0.3%	4.3%	12.4%
Total rules in Agenda pipeline	3,777	–1.9%	17.1%	–7.0%
Completed	475	–24.6%	1.1%	–59.5%
Active	2,678	1.6%	35.5%	12.2%
Long term	624	6.5%	–18.1%	24.1%
“Economically significant” rules in the year-end pipeline	295	13.0%	110.7%	31.7%
Completed	40	–31.0%	90.5%	–29.8%
Active	205	18.5%	188.7%	50.7%
Long term	50	66.7%	4.2%	61.3%
Rules affecting small business	693	9.1%	17.5%	–18.9%
Regulatory flexibility analysis required	354	1.1%	5.0%	–24.7%
Regulatory flexibility analysis not required	339	18.9%	34.0%	–11.7%
Rules affecting state governments	514	25.7%	77.9%	15.8%
Rules affecting local governments	325	26.0%	87.9%	21.3%
GAO Congressional Review Act reports on major rules	98	–30.0%	38.0%	28.9%
Executive Orders	93	36.8%	47.6%	138.5%
Executive Memoranda	31	–47.5%	–18.4%	–3.1%
“Notices” in the <i>Federal Register</i>	21,985	–2.2%	–0.7%	–9.8%

n/a = not applicable. Some years fiscal, some years calendar—see text for more information.

* year-end 2020; ^ year-end 2019

What Comes after “Trillion”?

The Unknowable Costs of Regulation and Intervention

The federal government undertakes little review of federal regulation to assure that individual regulations do more good than bad each year, and performs no assessment of regulatory burdens as a whole. The last aggregate annual estimate of the cost of the regulatory enterprise, as required by law,³³⁰ was performed in 2002.³³¹ The sole official reckoning citizens get regarding the scale and scope of regulatory costs is an annual (in law³³² but not in practice³³³) survey by the OMB of a subset of regulatory costs and benefits, called the *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*.³³⁴ These reports contain a limited overview of significant rules and a partial and suspect monetary quantification of costs and benefits of a handful of executive agencies’ rules during the current fiscal year and the most recent 10 years.

OMB’s 2017 *Report to Congress on Benefits and Costs*, covering fiscal year 2016 Obama-era rules and regulations, arrived years overdue, in December 2019.³³⁵ Despite a long history of tardiness and incompleteness, this years-long delay was unprecedented.³³⁶ A frenzy to catch up brought forth a truncated *Draft Report* combining the overdue fiscal years 2018, 2019, and 2020 in one abbreviated volume the day before Christmas Eve in 2019,³³⁷ along with helpful supplemental tables in electronic format, but without the 10-year lookbacks that had become standard, let alone the aggregate estimate required by law.³³⁸ Undated final reports for those years, covering the period through FY 2019, appeared on OMB’s website with a URL indicating they were uploaded in January 2021.³³⁹ But that still leaves out fiscal years

2020 and 2021, so we are slightly behind curve in this presentation. While the reports were late, the public at the time did get the year-end status reports on Trump’s one-in, two out Executive Order 13771 directive on agency regulations.³⁴⁰

OMB’s last 10-year survey from FY 2016 reported that federal agencies published 36,255 final rules in the *Federal Register*, and that it reviewed 2,670 of those final rules under Executive Order 12866. Of those OMB-reviewed rules, 609 were considered major. Yet OMB claimed high net regulatory benefits, pegging the cumulative benefits of a selection of 137 of 609 major regulations issued between 2006 and 2016 at between \$287 billion and \$911 billion (in 2015 dollars). The estimated range for the decade’s costs was \$78 billion to \$115 billion. The 16 rules subjected to both benefit and cost analyses during FY 2016 added annual costs in the range of \$4.3 billion to \$6.4 billion. The newer White House composite report, on fiscal years 2017–2019, covers a handful of major rules and admits to total costs and benefits of only a few billion each.³⁴¹

- **FY 2017:** \$6.9 billion to \$11 billion in annual benefits; \$2.5 billion to \$3.7 billion in annual costs (2016\$)
- **FY 2018:** \$0.2 billion to \$0.6 billion in annual benefits; \$0.1 billion to \$0.3 billion in annual costs (2017\$)
- **FY 2019:** \$0.2 billion to \$3.7 billion in annual benefits; up to \$0.6 billion in annual costs (2018\$)

The cumulative high end for costs in the three recent fiscal years is around \$4.6 billion, compared to around \$105 billion for

The federal government performs no assessment of regulatory burdens as a whole.

Transfer and budget programs are inherently interventionist and regulatory in nature.

the prior 10 years.³⁴² These are not representative of all regulatory costs, but they are what is available, and are useful markers. While OMB's reports did not tally them, some rules with costs but not benefits tabulated are presented as well. Going back to 2002, there are dozens of such rules, with high-end cost estimates that max out at \$54 billion.³⁴³

As OMB acknowledges in the 2018, 2019, and 2020 *Report to Congress*: "As has been the practice for many years, all estimates presented ... are agency estimates of benefits and costs, or minor modifications of agency information performed by OMB."³⁴⁴ Ultimately, the regulators themselves decide what counts as major. OMB notes also that its report "does not purport to demonstrate all costs or benefits from federal regulation; instead, the report summarizes the anticipated costs and benefits that the Regulatory Impact Analyses (RIAs) of individual final rules reported for those rules."³⁴⁵ The report acknowledges an "often-overlooked detail"—that "the totals listed ... include only the benefits and costs for the minority of rules for which both those categories of impacts were estimated."³⁴⁶

Overall, the 2018–2020 consolidated *Report to Congress* encompasses only 145 "major" rules, a small number compared with the more than 9,500 rules—from large to small to inconsequential—issued during the corresponding calendar years.³⁴⁷ Of the 145 major rules, the three-year report featured only 30 rules with both benefits and costs "quantified and monetized" and another 28 with costs alone quantified, in some cases partially.³⁴⁸ OMB asserts the major rules it reviews, including budget rules, "represent approximately one-fourth" of the significant regulatory actions reviewed by OMB.³⁴⁹

Of the hundreds of executive agency major rules issued since 2001 (among tens of thousands of nonmajor rules issued), a relative handful received OMB-reviewed quantified cost analysis, let alone cost *and* benefit analysis; overall about 38 percent had quantitative cost estimates.³⁵⁰ When one looks beyond the officially self-designated "major"

rules, the proportion of all rules with any cost analysis averages less than 1 percent.³⁵¹

OMB references a 2004 claim that major rules reviewed account for the bulk of regulatory costs.³⁵² Earlier OMB reports had been more open to the significance of indirect and unaccounted costs. Even today, OMB does not review independent agency rules like those of the FCC or financial regulatory bodies. OMB review fails to capture entire categories of economic and social regulation, as depicted in Box 3 later in this report. Even the Unfunded Mandates Reform Act, surveyed in the *Report to Congress*, exempts a great deal of regulatory intervention from critical analysis.³⁵³ So what OMB documents arguably bears little relation to the costs of government regulation throughout society.

Transfer and budget programs, unless directly related to national defense or criminal justice, are inherently interventionist and regulatory in nature. Yet the costs and market distortions caused by such federal spending are not counted,³⁵⁴ nor are the deadweight effects of such budget rules, even when the federal government has taken over a substantial portion of a function such as retirement and senior health care.³⁵⁵ Pell Grants alter private college financing. Federal medical programs have altered the medical market to such an extent that single-payer insurance is now contemplated. Washington's expansion of middle-class dependency on federal government transfers is about as fundamental as social regulation gets, yet it is not counted as costs.³⁵⁶

The fundamental problem with the regulatory *Report to Congress* is that net-benefit analysis helps fuel indefinite government expansion. Creative regulators can alternate between maximizing net benefits—as in OMB's 19-year-old "Circular A-4" guidance on regulatory analysis—and claiming that benefits "justify" costs as specified in Executive Order 12866. Cost–benefit analysis is conveniently mute on such questions as benefits that may have accrued if an agency's "regulatory budget" allocation belonged to another agency instead. So there exists no genuine net-benefit

pursuit adopting a wider perspective than that of agencies in isolation, especially with OMB's abandonment of an aggregate assessment. In addition, costs of regulatory dark matter—such as agency memoranda, guidance documents, bulletins, circulars, and manuals—do not appear in OMB's annual assessments. Executive orders' effects are unaccounted for.³⁵⁷ Most is left out, despite OMB's having had decades to practice.

In contrast to the traditionally narrow OMB focus, a 2019 report from the Trump-era Council of Economic Advisers, *The Economic Effects of Federal Deregulation*, pointed to hundreds of billions in direct and indirect annual savings from changes not just in a set of rules removed, but in approaches to regulation as such:

The Council of Economic Advisers (CEA) estimates that after 5 to 10 years, this new approach to Federal regulation will have raised real incomes by \$3,100 per household per year. Twenty notable Federal deregulatory actions alone will be saving American consumers and businesses about \$220 billion per year after they go into full effect. They will increase real (after-inflation) incomes by about 1.3 percent. ...

This new approach to regulation not only reduces or eliminates costly regulations established by prior administrations but also sharply reduces the rate at which costly new Federal regulations are introduced. The ongoing introduction of costly regulations had previously been subtracting an additional 0.2 percent per year from real incomes, thereby giving the false impression that the American economy was fundamentally incapable of anything better than slow growth.³⁵⁸

In touting deregulatory actions and their purported benefits in July 2020, the White House claimed, "President Trump has signed 16 pieces of deregulatory legislation that are

expected to result in a \$40 billion increase in annual real incomes."³⁵⁹ The administration's deregulatory actions would save additional billions not entirely captured in the year-end updates on one-in, two-out. For example, the White House claimed that the "implementation of the SAFE [Safer Affordable Fuel-Efficient] Vehicles Rule is estimated to increase the real incomes of Americans by \$53 billion per year over the 2021–2029 period."³⁶⁰

During the coronavirus outbreak, the CEA also estimated the savings from regulatory streamlining related to pandemic recovery:³⁶¹

The total value of more widespread adoption of telemedicine would be approximately \$325 billion per year. Reducing FDA approval times by relaxing overly burdensome impediments to drug development would have a net present value of \$1.9 trillion if approval times are sped up by one year, \$3.9 trillion if sped up by two years, and \$5.9 trillion if sped up by three years. Expanding occupational licensing deregulation for nurse practitioners nationwide could result in \$62 billion in cost savings for patients annually.

Many such changes are on the chopping block in the Biden administration, but the takeaway from the CEA approach is that far greater costs exist that can be attributed to regulation than the annual *Report to Congress* has ever addressed. That perspective would include, for example, greater attention to the ways regulation and infrastructure spending affect not only current jobs, but also entrepreneurs' inclination to create new jobs in the future.

Inevitably, the CEA's assertions in its 2019 *Economic Effects of Federal Deregulation* report were blasted as "bad fiction"³⁶² by progressives.³⁶³ But if there is validity to the proposition that such regulatory liberalizations (and those adopted during COVID-19) reduced costs substantially, it is also reasonable to presume prior increases in regulation will have added billions of dollars to what has been depicted in the normal

Far greater costs exist that can be attributed to regulation than the annual Report to Congress has ever addressed.

compliance measures. Massive government spending and steering without issuing a rule is also a form of regulation.³⁶⁴

As it stands, the federal bureaucracy, even with all the vast resources at its disposal, has done nothing to fulfill its duty to assess the aggregate effects of regulation and intervention in which it engages. The Small Business Administration (SBA) last published an assessment of the federal regulatory apparatus in 2010, pegging regulatory compliance costs at \$1.75 trillion for 2008, but that report was discontinued and has not been replaced. The primary purpose of the SBA report series was not preparation of an aggregate cost estimate (that is OMB's neglected job), but rather an examination of regulatory burdens on small firms, which have higher per-employee regulatory costs than larger ones. Earlier government assessments from around the turn of the 21st century from OMB, the GAO, and the SBA also found aggregate annual costs in the hundreds of billions of dollars, some in excess of \$1 trillion in the 2013 dollars depicted in Table 2.

Regulatory costs are not observable or calculable—many of the economic calculations necessary to enable central economic planning are impossible.³⁶⁵ That is why the real goal for restraining the growth of government is not regulatory reform alone, but restoration of Congress' lawmaking duties under Article I of the Constitution, and restraints on that power. Even so, the need for disclosure is imperative as long as the administrative state persists. The solution in the meantime is for Congress to internalize costs by voting on costly and controversial rules (eventually and ideally all of them) and to avoid vague legislation that delegates tremendous authority to administrative agencies.

As for officialdom improving what it has, the annual OMB cost-benefit breakdown omits the independent agencies that issue many regulations. It also incorporates only those rules for which agencies have calculated both benefits and costs. That amounts to a couple dozen at best,

even as, each year, agencies issue several thousand rules and guidance documents.

Box 3 illustrates a wide range of regulatory and administrative state interventions that generally go unacknowledged.³⁶⁶

Private entities have attempted to quantify regulatory costs. In a 2014 report, the National Association of Manufacturers (NAM) tallied 2012 total annual regulatory costs in the economy of \$2.028 trillion (in 2014 dollars).³⁶⁷ Unsurprisingly, the NAM report was criticized by progressive academics and consultants for agencies.³⁶⁸ A report from 2013—by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University—counts the long-term reduction in economic growth caused by decades of cumulative opportunity costs imposed by economic regulation. It posited dozens of trillions of dollars in lost gross domestic product (GDP) annually. The authors contended that rules affecting growth rates compound, and that Americans are less than half as rich as they would be in the absence of much of the regulatory state.³⁶⁹

Such surveys and earlier Small Business Administration and OMB ones had traditionally conveyed regulatory costs in the following categories:

- Economic regulatory costs (for example, market entry restrictions and transfer payments such as price supports)
- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

The NAM report found overall annual per-employee regulatory costs to firms of \$9,991 on average, but to vary by firm size.³⁷⁰ Table 3 shows that per-employee regulatory costs for firms with fewer than 50 workers can be 29 percent greater than those for larger firms—\$11,724 for smaller firms, compared with \$9,083 for larger ones.³⁷¹ These figures have not been updated in some time, but the general acceptance of the notion that regulation can more heavily fall on small businesses might be one anchor for reformers.

**Table 2. Assessments of Federal Regulation:
Late 20th Century, Early 21st Century (millions of dollars)**

	Hopkins 1992 (1991 dollars)	Government Account- ability Office 1995 (1995 dollars)	Hopkins 1995 (1995 dollars)	Small Business Admini- stration 2001 (2001 dollars)	Office of Manage- ment and Budget 2002 (2001 dollars)	Small Business Admini- stration 2005 (2004 dollars)	Small Business Admini- stration 2010	National Association of Manufacturers 2014 (2012 dollars)
Environmental	115		168	197	203	221	281	330
Other Social	36		55		30			
Transportation					22			
Labor					22			
Economic Regulation						591	1236	1448
Efficiency	73		80		150			
Transfers	130		147		337			
Efficiency— Domestic				101				
Transfers— Domestic				202				
Efficiency— International Trade				44				
Transfers— International Trade				88				
Workplace and Homeland Security				82		106	75	92
Paperwork/ Process/Info Collection (tax compliance)	189		218	129	190	195	160	159
Totals:	\$543	\$647	\$668	\$843	\$954	\$1,113	\$1,752	\$2,029
Legacy totals, in 2013 \$		\$1,019.03	\$1,052.10	1,142.27	1,292.67			

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps," report prepared for the Regulatory Information Service Center, Washington, D.C., August 1992, <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>; General Accounting Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, "Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations," (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat/1/153774.pdf>; Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, DC, October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html; Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," Federal Register, March 28, 2002, p. 15037–8, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>; W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>; W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advocacy/7540/49291>; and W. Mark Crain and Nicole V. Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," National Association of Manufacturers, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2016 by the change in the consumer price index between 2001 and 2016 and between 1995 and 2016, derived from "CPI Detailed Report Data for January 2017," Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers—CPI-U), U.S. city average, All items.), <https://www.bls.gov/cpi/cpid1701.pdf>.

Box 3. Unmeasured Costs of the Administrative State

I. Unmeasured Costs of Shortcomings in Administrative Procedure Act Oversight

A. Rule Cost Categories Prone to Escaping Measurement and Disclosure³⁷²

- Costs of rules not deemed economically significant by agencies that in fact are
- Costs of independent agency regulations
- Costs of unfunded mandates on states and localities
- Costs of interpretive rules and guidance documents
- Indirect costs
- Job costs of regulation

B. Process/Oversight Shortcomings Generating Unknown Financial and Societal Costs³⁷³

- Costs of abandonment of formal rulemaking
- Costs of agencies' failure to issue a notice of proposed rulemaking for a significant portion of rules
- Costs of agency-gamed notice-and-comment processes
- Costs of agencies' undermining the Congressional Review Act by failing to submit final rules to Congress and to the Government Accountability Office for consideration
- Costs of baked-in pro-regulatory bias
- Costs of economically disruptive policy uncertainty
- Costs of regulation by sue-and-settle agreements
- Costs of regulatory accumulation
- Costs of differential effects of rules on businesses

II. Unmeasured Costs of the Loss of Liberty³⁷⁴

- Costs of regulatory takings and property value destruction³⁷⁵
- Costs of abandoning negative rights for a positive rights framework that entails unequal treatment of citizens under the law³⁷⁶
- Costs of delegation of lawmaking power to the executive branch and to unelected administrators³⁷⁷
- Costs of lack of agency accountability to Congress through agency self-funding³⁷⁸
- Costs of normalization of dependency
- Costs of imposing regulation based on secret or creatively leveraged data³⁷⁹
- Costs of abandoned federalism³⁸⁰
- Costs of overcriminalization³⁸¹
- Costs of loss of anonymity due to state surveillance³⁸²

III. Costs of Spending and Legislative Programs with Sweeping Regulatory Effect

- Costs of top-down national plans, agendas, and treaties³⁸³
- Costs of distortions created by "ordinary" federal spending, subsidies, and stimulus³⁸⁴
- Costs of deadweight effects of federal spending³⁸⁵
- Costs of government spending to steer investment in science and technology

IV. Costs of the Derailment of Market Institutions

- Costs of the presumption of agency expertise³⁸⁶
- Costs of disregard of government failure
- Costs of interference with price, distribution, and access mechanisms
- Costs of antitrust regulation and the institutionalization of raising competitors' costs³⁸⁷
- Costs of blurring corporate and government roles with government-sponsored enterprises and public-private partnerships³⁸⁸
- Costs of government steering by direct ownership or control of resources³⁸⁹
- Costs of eroded property rights
- Costs of regulatory public utility, siloed-infrastructure models
- Costs of top-down approaches to environmental amenities and concerns³⁹⁰
- Costs of permission-seeking and excessive occupational licensing
- Costs of cronyism through rent-seeking³⁹¹
- Costs of permanent bureaucracy³⁹²

V. Costs of Lethality

- Costs of the precautionary principle and the derailment of normal evolutionary risk-management innovation
- Costs of selective expression of benefits
- Costs of wealth and health loss induced by regulation
- Health costs of rent-seeking
- Costs of undermining markets in information

Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012

	Cost per Employee for All Business Types			
	All Firms	< 50 Employees	50–99 Employees	> 100 Employees
All Federal Regulations	\$9,991	\$11,724	\$10,664	\$9,083
Economic	\$6,381	\$5,662	\$7,464	\$6,728
Environmental	\$1,889	\$3,574	\$1,338	\$1,014
Tax Compliance	\$960	\$1,518	\$1,053	\$694
Occupational/Homeland Security	\$761	\$970	\$809	\$647

Source: W. Mark Crain and Nicole V. Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," National Association of Manufacturers, September 10, 2014, <https://www.nam.org/wp-content/uploads/2019/05/Federal-Regulation-Full-Study.pdf>.

Others have set out to examine how seemingly inconsequential regulations accumulate and generate unintended effects and costs that ought not be ignored.³⁹³ A 2016 report by the Mercatus Center at George Mason University employs a microeconomic model to determine "how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth." Using a 22-industry data set covering 1977 through 2012, the report concluded that, had regulatory burdens remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger. Put another way, the 2012 U.S. economy was \$4 trillion smaller than it would have been in the absence of cumulative regulatory growth since 1980.³⁹⁴ That represents a loss in real income of approximately \$13,000 per American per year.³⁹⁵

For several years, this report has employed a baseline for across-the-board costs of federal regulation of \$1.9 trillion annually in compliance costs, economic and GDP losses, social, and other costs.³⁹⁶ Given the emergence at long last of the four recent OMB Reports to Congress (the 2020 fiscal year draft remains overdue), an additional \$10.93 billion annually is added for rules since 2016 that have partial quantification of both costs and benefits³⁹⁷ and another \$14.08 billion for rules since 2016 that feature only a cost analysis (which in some years outnumbered those with both cost and benefits quantified).³⁹⁸ That additional \$25.01 billion brings a total of \$1.927 trillion (see Figure 1). Several recent elements of regulation are not incorporated here, such as updates on costs

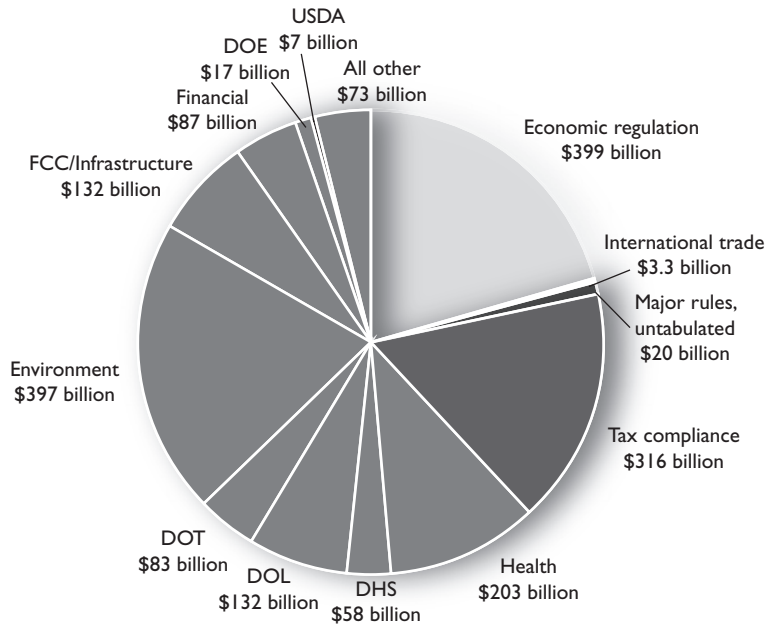
of trade restrictions and a nominal (given the size of the federal government) increase in independent agency paperwork costs (see Box 3).

This placeholder estimate is based on a non-scientific, disclaimer-laden, amalgam of GDP losses and compliance costs derived from available official data and other accessible sources.³⁹⁹ It recognizes that significant figures in mathematical terms are indeterminate. With those caveats, this assessment is more representative and inclusive than slant-laden official estimates of costs, and are therefore more "conservative" in that burden estimates are considerably greater. A central government nonchalant about \$30 trillion in debt will likely be so regarding off-the-books regulation of the sort that Box 3 begins to capture. Despite the overwhelming difficulty of calculating regulatory cost estimates, it is crucial for the federal government to disclose estimated costs of aggregate burdens to the extent possible. Taking that step will not legitimize illegitimate aspects of the administrative state, but policy makers do need to force OMB to perform comprehensive assessments. In the meantime, subsequent reports will add new fiscal years' partial tallies incrementally, should the OMB make them available.

Just as no two people see the same rainbow, there will never be agreement on the magnitude of costs and benefits. The assessments we have do not capture numerous other categories of costs, such as the costs of antitrust, common-carriage telecom network regulations, federal health care spending, predominance of public-private partnerships in

The 2012 U.S. economy was \$4 trillion smaller than it would have been in the absence of cumulative regulatory growth since 1980.

Figure I. Annual Cost of Federal Regulation and Intervention, 2022 Placeholder Estimate, \$1.927 Trillion



Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 Edition, available at www.tenthousandcommandments.com, and editions of OMB Reports to Congress on regulatory costs and benefits, <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports>.

DHS = Department of Homeland Security; DOE = Department of Education; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission; USDA = U.S. Department of Agriculture.

large-scale infrastructure projects, resource-use restrictions on western lands, a “too big to fail” stance toward large financial institutions, the permanent war economy, surveillance of private citizens, overcriminalization, monopolization of airport security, influence in the housing market and financing, and much more.

While escalation of government debt owing to the pandemic and new measures like the bipartisan infrastructure bill will show up in federal budget figures, other interventions rooted in such major legislation, such as costs of the eviction moratoria, may never appear in anything presented by OMB.⁴⁰⁰ Note that Trump added such costs as well. It is also difficult to assess the cost attributable to the federal government’s contribution to inflation and supply chain disruption. Douglas W. Allen of Canada’s Simon Fraser University remarked in September 2021: “It

is possible that lockdown will go down as one of the greatest peacetime policy failures in modern history.”⁴⁰¹ Costly lockdowns are a metaphor for any regulation, harming the production frontier. (After all, some business literature finds mere routine distractions and interruptions in the workplace cost hundreds of billions each year.⁴⁰²) Redirecting private sector resources toward government-chosen ends will have trillions in compounded ripple effects, leading to opportunity costs not likely to show up in any yearly regulatory assessment.

Problems of measuring GDP are similar to those of measuring regulation. With respect to the pandemic’s effect on the most recent GDP estimates, the U.S. Bureau of Economic Analysis said: “The full economic effects of the COVID-19 pandemic cannot be quantified in the GDP estimate for the fourth quarter because the impacts are gener-

ally embedded in source data and cannot be separately identified.”⁴⁰³

The cost estimate employed here speaks to the partial roundup of unfathomed costs depicted in Box 3, but does not quantify them. Enormous costs never find their way into regulatory analyses or public disclosure.

With regard to the mechanics of disclosure for those favoring it, the debate has never been over whether the government should perform its cost assessment, but whether it should be bottom-up or top-down.⁴⁰⁴ The answer is that both approaches are needed, at least as long as the administrative state dominates as a form of governance. As it stands, neither happens.

Regulatory Cost Burdens Compared with Federal Spending and the Deficit

Comparisons of regulation with the costs of federal taxation and spending help place the relative magnitudes in perspective, but the calculus is changing dramatically with interventions like surge in spending and regulation related to COVID, infrastructure, and technology. The first-ever trillion-dollar budget occurred in the latter half of the 1980s; nominal deficits of over \$3 trillion dwarf that now; while projected to drop below \$1 trillion by fiscal year 2023, they top \$1 trillion and are projected to stay there beyond post-2025, with no end in sight.⁴⁰⁵

The U.S. federal government posted \$6.822 trillion in outlays and a deficit of \$2.775 trillion in FY 2021 and revenues of \$4 trillion.⁴⁰⁶ In the Congressional Budget Office’s new *Budget and Economic Outlook*, trillion-dollar deficits continue every year through 2032, at which point the projection reaches \$2.253 trillion.⁴⁰⁷

Figure 2 compares deficits and outlays for fiscal years 2020 and 2021 and projected amounts for 2022. Where costs of regulation have tended to hover around 40 per-

cent of outlays, the skyrocketing spending in 2020 resulted in regulatory compliance costs of about 28 percent of budget outlays of \$6.822 trillion. We now find the deficit some 65 percent larger than the placeholder estimate for total federal regulatory costs.

Regulatory Costs Compared with Income Taxes and Corporate Profits

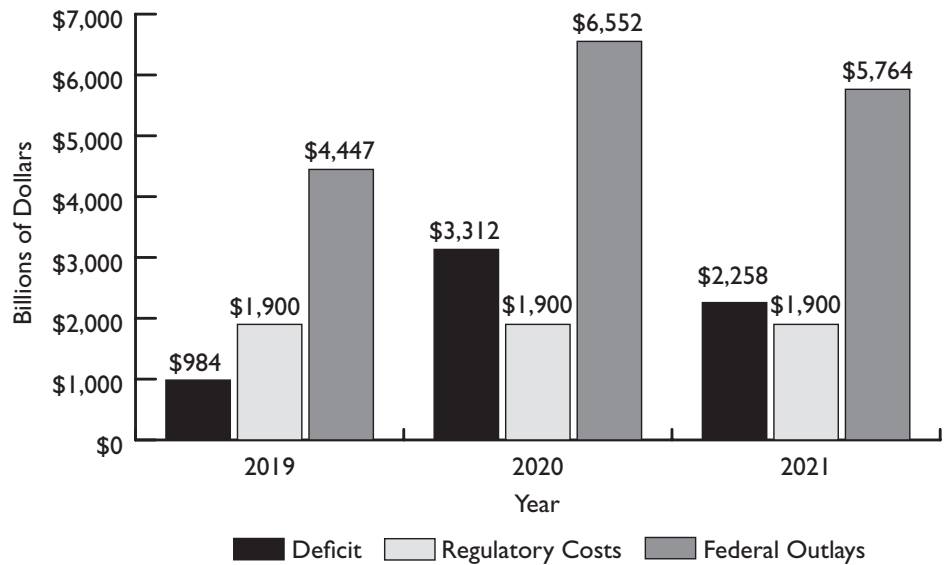
Regulatory costs easily rival revenues from individual income taxes and corporate taxes combined. As Figure 3 shows, regulatory costs surpass 2021 estimated individual income tax revenues of \$1.705 trillion.⁴⁰⁸ Incidentally, 2022 estimated individual income taxes are projected to surge to \$2.038 trillion. Corporate income taxes collected by the U.S. government—an estimated \$268 billion for 2021—are dwarfed by regulatory costs.⁴⁰⁹ The sum of the two—\$1.97 trillion—is rivaled by our regulatory cost marker of \$1.927 trillion. Regulatory costs as depicted here also approach the level of pretax corporate profits, which were \$2.184 trillion in 2020.⁴¹⁰

Regulatory Costs Compared with GDP

In January 2022, the Commerce Department’s Bureau of Economic Analysis estimated U.S. current-dollar GDP for 2021 at \$23.99 trillion.⁴¹¹ The total regulatory cost figure of \$1.927 trillion annually is equivalent to approximately 8 percent of that amount (other considerations could take that percentage higher as GDP grows. Combining regulatory costs with federal FY 2020 outlays of \$6.822 trillion (see Figure 2), the federal government’s share of the economy reached \$8.75 trillion in 2021, or roughly 36 percent of GDP, compared with the stubborn longstanding annual combined figure of approximately 30 percent (see Figure 4). That does not include state and local spending and regulation.

Enormous costs never find their way into regulatory analyses or public disclosure.

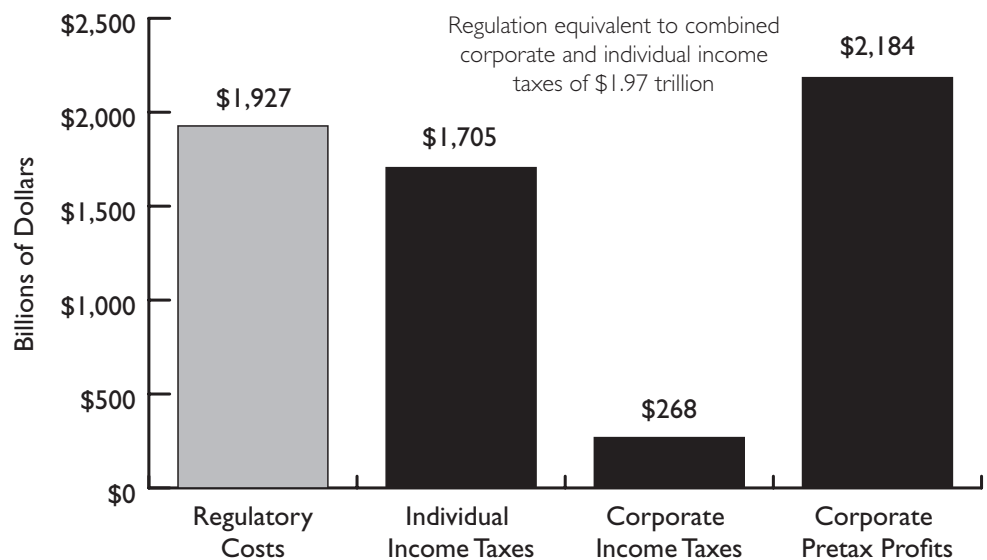
Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2020, 2021, and Projected 2022)



Sources: Deficit and outlays and projected outlays from Congressional Budget Office, *The Budget and Economic Outlook*, Table I-1, “CBO’s Baseline Budget Projections, by Category,” various years, <https://www.cbo.gov>. Deficit and outlays also from White House Office of Management and Budget, Historical Tables, Table I.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–present, <https://www.whitehouse.gov/omb/historical-tables/>. Regulatory cost estimate from Crews, *Tip of the Costberg*.

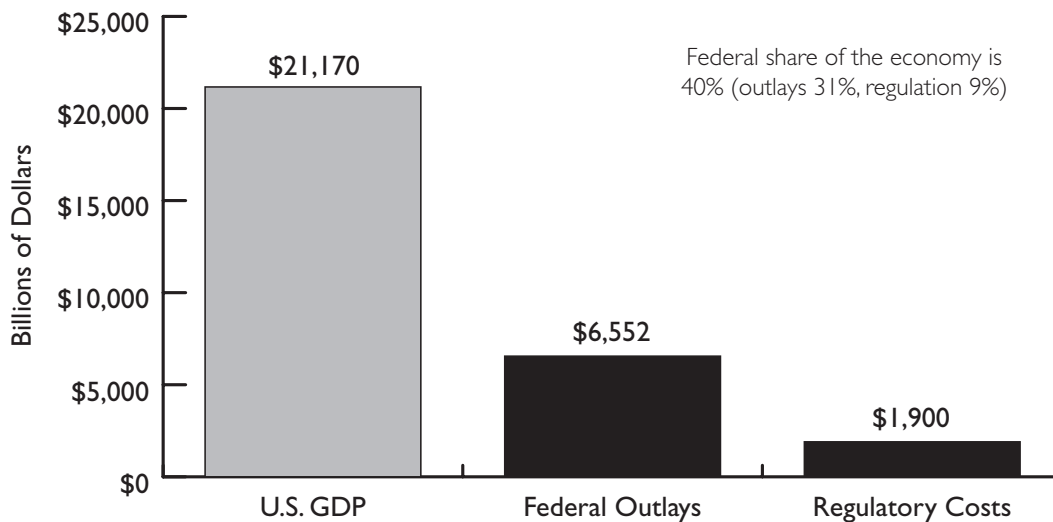
Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

Figure 3. Regulatory Compliance Compared with Individual Income Taxes, Corporate Income Taxes, and Corporate Pretax Profits



Sources: Regulatory cost placeholder from Crews, *Tip of the Costberg* and 2017–2020 editions of OMB Report to Congress on regulatory costs and benefits as compiled by the author in OMB-Tallied Social Regulation Subset, <http://bit.ly/1wpQTrm>, and Annual Costs of Untabulated Major Rules Reviewed at OMB—by Fiscal Year, <http://bit.ly/1sp0UkH>; 2021 est. tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source,” <https://www.whitehouse.gov/omb/historical-tables/>; 2020 Corporate pretax profits (domestic and international) from Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 6.17D, “Corporate Profits before Tax by Industry.”

Figure 4. GDP in 2021 Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg* and 2017–2020 editions of OMB Report to Congress on regulatory costs and benefits as compiled by the author in OMB-Tallied Social Regulation Subset, <http://bit.ly/1wpQTrm>, and Annual Costs of Untabulated Major Rules Reviewed at OMB—by Fiscal Year, <http://bit.ly/1sp0UkH>. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, Outlays from Congressional Budget Office and White House Office of Management and Budget.

U.S. Regulation Compared with Some of the World’s Largest and Freest Economies

Not counting the United States, only seven countries had a GDP in 2020 that exceeded the cost benchmark for U.S. regulation; fewer would if other indeterminate costs were taken into account. U.S. regulatory costs surpass the 2020 GDP of neighbors Canada, at \$1.643 trillion, and Mexico, at \$1.076 trillion (both of which declined during the pandemic). If U.S. regulatory costs of \$1.927 trillion were a country, it would be the world’s eighth-largest economy, ranking behind France and ahead of Italy (see Figure 5).⁴¹²

The U.S. regulatory figure of \$1.927 trillion exceeds the output of many of the world’s major economies, including those ranked as the freest economically by two prominent annual surveys of global economic freedom. Figure 6 depicts the 2020 GDPs of the countries common to the top 10 in both the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom and the Fraser In-

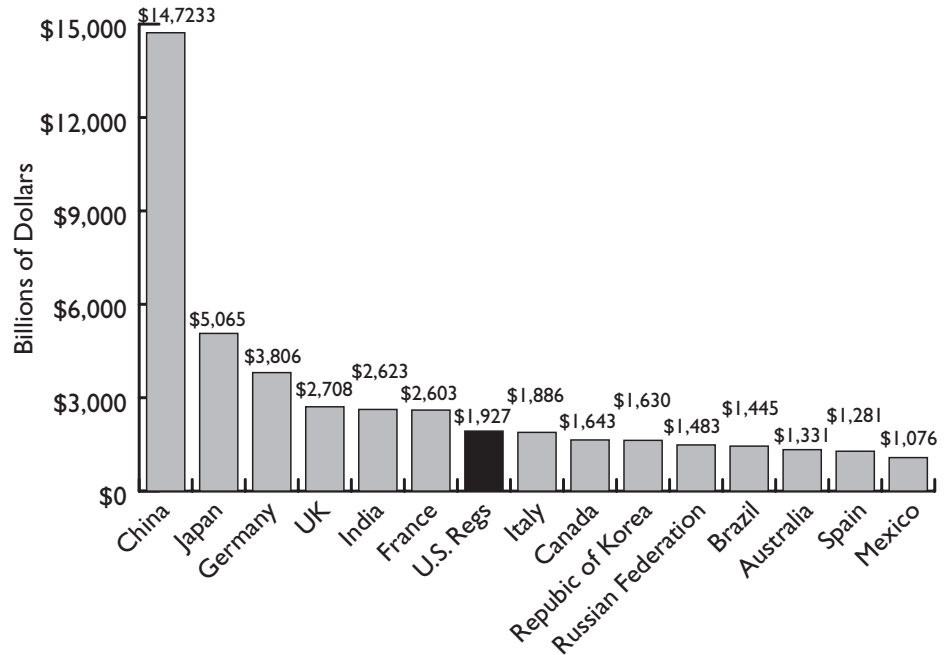
stitute/Cato Institute Economic Freedom of the World report. Cato notes of Hong Kong and Singapore that “the interventions of the Chinese government in 2019 and 2020 will likely have a negative impact on Hong Kong’s score going forward.” The Fraser/Cato index ranks the United States sixth and Heritage 20th.⁴¹³

Regulation: A Hidden Tax on the Household Budget

Appearing in black and white, the burden of taxation can seem more immediate and present than that of regulation, but, like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers. Other costs will find their way to workers and investors in regulated companies. By assuming a full pass-through of all such costs to consumers—and many consumers are also workers and owners through stock and mutual fund holdings—we can look at the share of each household’s regulatory costs and compare it with total annual expenditures as

Like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers.

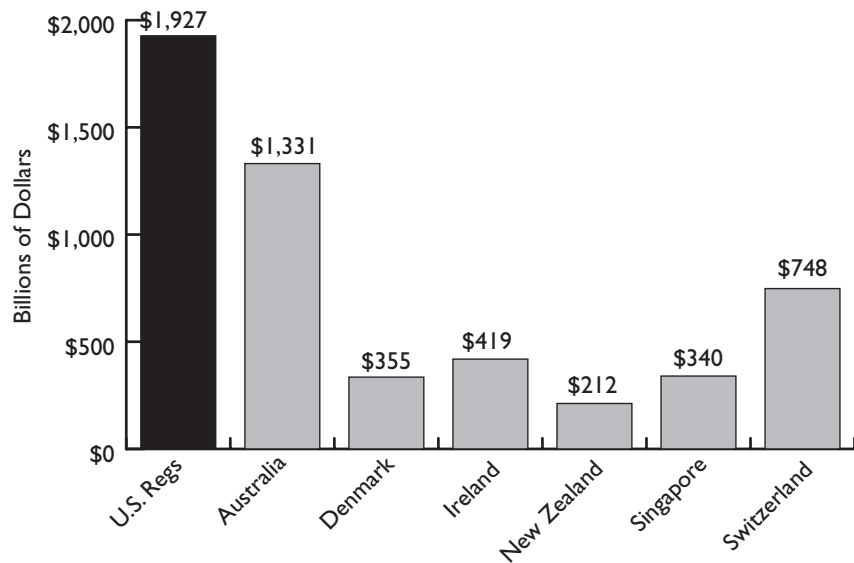
Figure 5. U.S. Regulatory Costs Compared to 2020 Gross Domestic Product of the World's Largest Economies



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries> and <https://databank.worldbank.org/data/download/GDP.pdf>.

U.S. 2020 GDP of \$20,936 trillion per World Bank not shown.

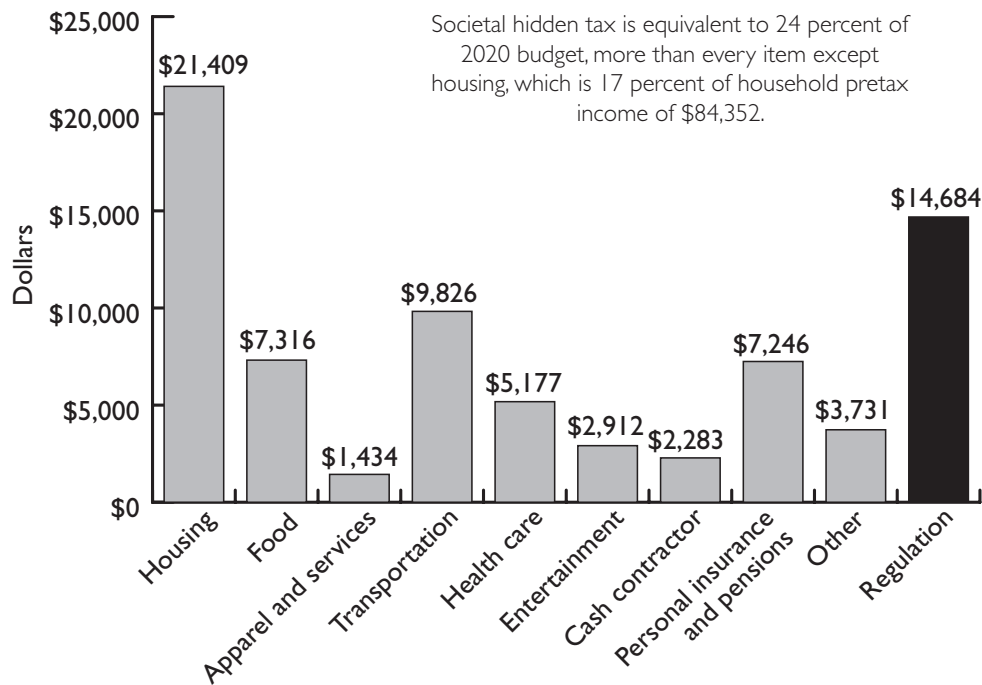
Figure 6. U.S. Regulatory Load Compared to 2020 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>.

"Free" economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom and the Fraser Institute/Cato Institute *Economic Freedom of the World* reports.

Figure 7. U.S. Household Expense Budget of \$61,334 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author calculations.

Proxy for households here is BLS depiction of 131,234,000 “consumer units,” which comprise “families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” Other consists of “personal care products and services,” “education,” and “all other expenditures.”

compiled by the Department of Labor’s Bureau of Labor Statistics (BLS).⁴¹⁴

For America’s 131.2 million households, or “consumer units” in BLS parlance, the average 2020 pretax income was \$84,352.⁴¹⁵ If one were to allocate annual regulatory costs assuming, for simplicity’s sake, a full pass-through of costs to consumers, U.S. households “pay” \$14,684 annually in embedded regulatory costs (\$1.927 trillion in regulation divided by 131,234,000 “consumer units”), or 17 percent of average income before taxes, and more as a share of after-tax income. This regulatory “hidden tax” exceeds every annual household budgetary expenditure item except housing (see Figure 7). Regulatory costs amount to up to 24 percent of the typical household’s expenditure budget of \$61,334. The average U.S. household “spends” more on hidden regulation than on health care, food, transportation, entertainment, apparel,

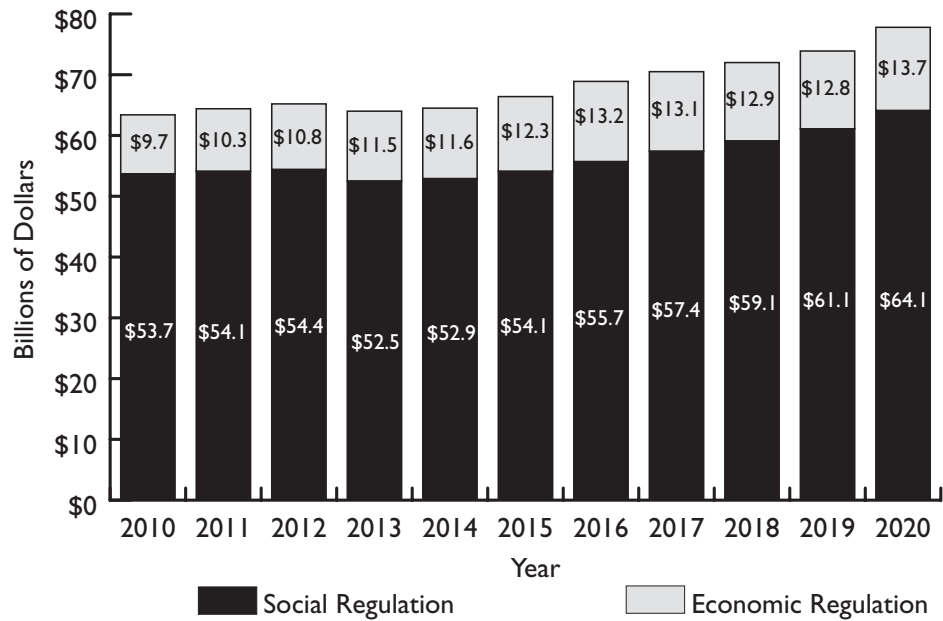
services, or savings. Of course, some costs of regulation are not hidden. Consumers pay for regulatory agencies and administration more directly through taxes, as described in the next section.

Administrative and Enforcement Costs of Regulation

Regulatory cost estimates inadequately capture compliance, dead weight, and other costs experienced by the public, but those evaluations do not generally include administrative costs—the on-budget amounts spent by federal agencies to issue and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, DC, regularly examine presidents’ annual budget proposals to compile

The average U.S. household “spends” more on hidden regulation than on health care, food, transportation, entertainment, apparel, services, or savings.

Figure 8. Federal Agency Administrative and Enforcement Budgets, \$78 Billion Total in FY 2020



Source: Annual “Regulators’ Budget” Series, published jointly by the Regulatory Studies Center at The George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy.

Original 2012 constant dollars are adjusted here by the change in the consumer price index between 2012 and 2020, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. All Urban Consumers (CPI-U), U.S. city average, all items.

the administrative costs of developing and enforcing rules. Those amounts—funds that taxpayers contribute to support agencies’ administrative operations—are disclosed in the federal budget in a way that regulatory compliance and economic costs are not.

According to the latest compilation, FY 2020 enforcement costs incurred by federal departments and agencies stood at almost \$78 billion (in constant 2020 dollars, here adjusted from original 2012 dollars) (Figure 8).⁴¹⁶ Of that amount, \$13.7 billion was incurred on administering economic regulations. The larger amount, spent on writing and enforcing social and environmental regulations, was \$64.1 billion. The \$78 billion in regulatory agency enforcement costs helps complete a picture of the federal regulatory apparatus, as these costs come on top of other estimates of regulatory compliance and economic burdens. In current dollars, the Environmental Protection Agency alone spent an estimated \$5.561 billion in this category in 2020, accounting for 7 percent of

total expected expenditures by all regulatory agencies.⁴¹⁷ The EPA formerly accounted for the lion’s share of government administration and enforcement costs, but the Department of Homeland Security’s costs, at an estimated \$38 billion, now account for 48 percent.⁴¹⁸

The Weidenbaum Center and the Regulatory Studies Center also estimate the number of full-time-equivalent administrative and enforcement staff at 288,409 in FY 2021. The number of federal employees has increased by more than 100,000 since the 2001 staffing level of 173,057.⁴¹⁹ Much of the post-2001 surge may be attributable to the then-newly created Transportation Security Administration’s hiring of thousands of airport screening personnel.

Costs are one way to attempt to capture the size and scope of the federal regulatory enterprise. Another is to assess the production of paper—the regulatory material that agencies publish each year in sources like the *Federal Register*.

Tens of Thousands of Pages and Rules in the *Federal Register*

The *Federal Register* is the daily repository of all proposed and final federal rules and regulations.⁴²⁰ Although its number of pages is often cited as a measure of regulation's scope, there are problems with relying on page counts. A short rule may be costly, while a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other material. These all contribute bulk and bear some relation to the flow of regulation, but they are not strictly regulations. Blank pages, skips, and corrections also affect page counts. In previous decades, blank pages numbered into the thousands owing to the Government Publishing Office's imperfect estimation of the number of pages that agencies would require for publishing rules.

While the *Register* has always been known as the primary document cataloging regulations, it has recently chronicled their reduction, although a look at the daily *Federal Register* may not give that impression. Reducing regulations requires writing rules too, which can make the *Federal Register* still grow. Shortcomings notwithstanding, it is worthwhile to track the *Federal Register's* page counts, and under the Biden administration, offsetting deregulatory rules are no longer part of the bulk.

Federal Register Pages Up 41 Percent between Trump Years One and Four

On December 31, 2021, the *Federal Register* closed out at 74,532 pages, a figure that will

adjust downward slightly in the final National Archives reckoning and be taken into account later.⁴²¹

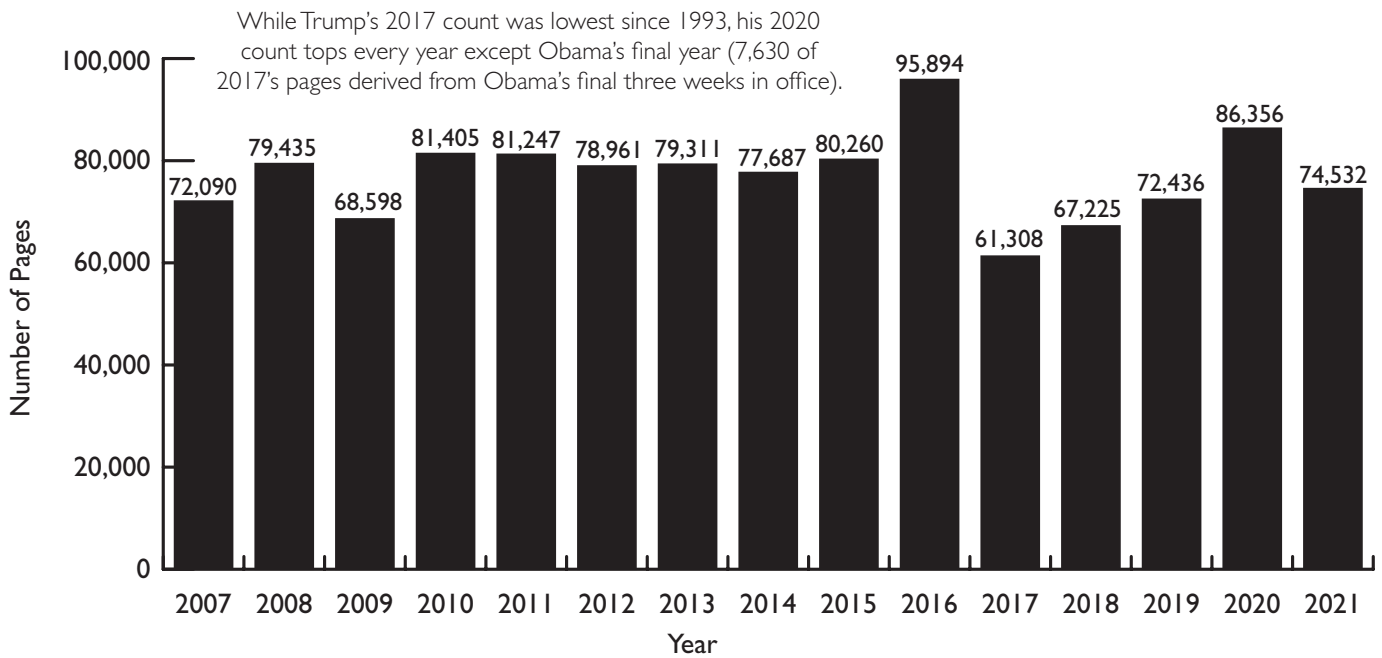
We can compare Biden's first year with two extremes, high and low. At the end of 2016, Obama's final calendar year, the number of *Federal Register* pages stood at 95,854, which at the time was the highest level in the history of the *Federal Register*. Conversely, the first calendar year of the Trump administration finished with 61,308 pages in the *Federal Register* (see Figure 9). The last time the annual page count had been that low was in 1993, at 61,166 pages, during the Clinton administration. By the time Trump was inaugurated on January 20, 2017, the Obama administration had already added 7,630 pages to the *Federal Register*, making Trump's "net" page count 53,678.⁴²²

Trump's page count rose after 2017. Trump's 2020 *Federal Register* tally of 86,356 pages stood a striking 41 percent above his first-year count, and represented the second-highest count of all time (merely 10 percent below Obama's record).⁴²³ The bulk of that was partly attributable to the one-rule-in, two-rules-out program and rewrites of major rules. The expansion of *Register* pages under Trump illustrates the aforementioned shortcomings of employing page numbers as a metric for regulation. Offsetting the typical implication that an increase in *Federal Register* pages implies an increase in regulation is the fact that to eliminate a rule, agencies need to overwrite it with another rule.

Biden's preliminary 2021 count of 74,532 is nearly 14 percent lower than Trump's final count (6,242 pages between January 1 and

**A short rule may
be costly, while a
lengthy one may
be relatively
cheap.**

Figure 9. Number of *Federal Register* Pages, 2007–2021



Source: National Archives and Records Administration, Office of the Federal Register.

A drop in page counts between administrations is typical, as new presidents freeze the pipeline at least temporarily and kick off their own priorities.

Biden's inauguration on January 20 also belong to Trump). The resulting "net" for Biden of 68,290 pages is lower than all but Trump's first year and otherwise the lowest since 2001.

A drop in page counts between administrations is typical, as new presidents freeze the pipeline at least temporarily and kick off their own priorities. Trump's 2017 count had been 36 percent below that Obama record. The last time a drop in *Federal Register* page counts of that magnitude happened was when Ronald Reagan reduced the count from Jimmy Carter's 73,258 in 1980 to 44,812 by 1986, but that 28,446-page drop took five years to materialize.⁴²⁴ Biden's 14 percent decrease from Trump compares blossoming apples of new regulation to the oranges of attempted streamlining.

Figure 9 captures the prior all-time record years of 2010 and 2011, at 81,405 and 81,247, respectively. Of the 10 all-time high *Federal Register* page counts, six occurred during the Obama administration. (For a history of *Federal Register* page totals

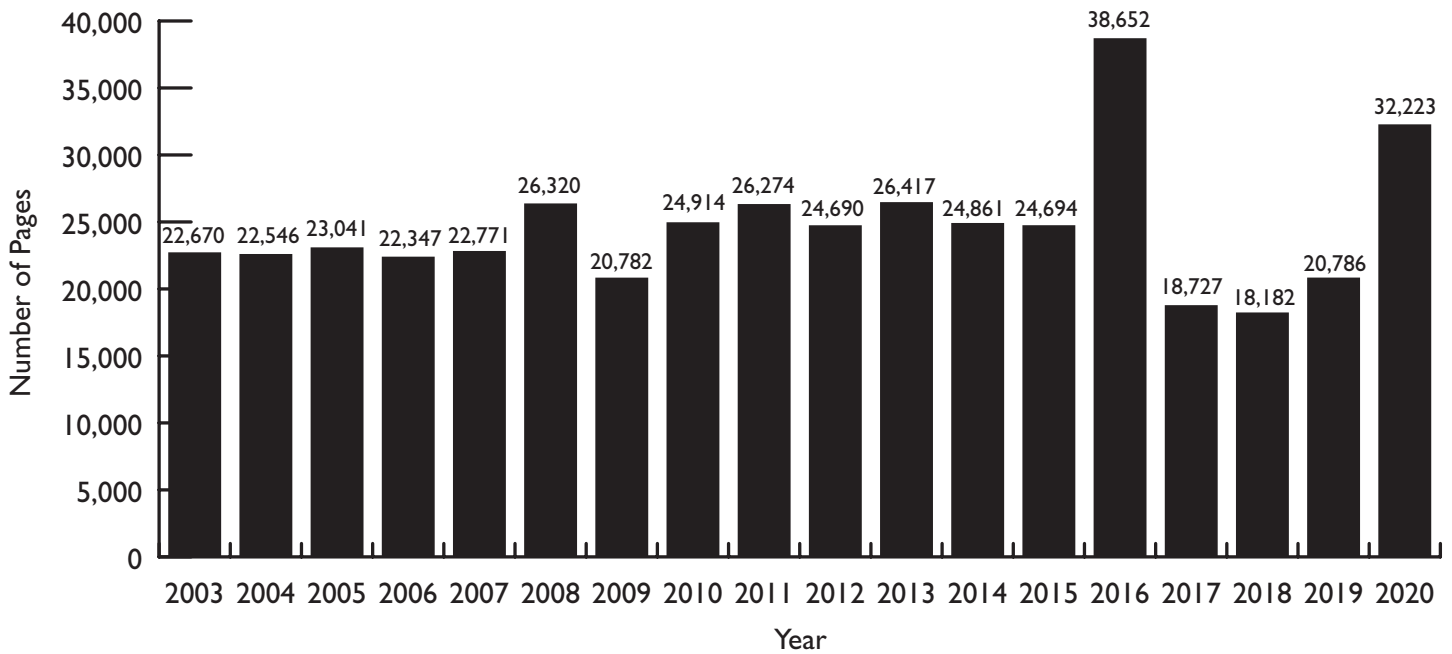
since 1936, see Appendix: Historical Tables, Part A.)

Federal Register Pages Devoted to Final Rules

Isolating the pages devoted to *final* rules might be more informative than gross page counts, since doing so omits pages dedicated to proposed rules, agency notices, corrections, and presidential documents (although those can also have regulatory effects).

The number of pages devoted to final rules from Biden's first year is not available as of this writing. However, in 2018 it stood at 16,378, the lowest count since 1992. In contrast, Trump's final year set the second-highest count of all time at 32,223. Naturally, some rules are bulkier than others. Trump's streamlining-oriented Safer Affordable Fuel-Efficient, or SAFE, Vehicles Rule for Model Years 2021–2026 alone clocked in at 1,105 pages.⁴²⁵

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2003–2020



Source: National Archives and Records Administration, Office of the Federal Register.

The—perhaps unexpected—55 percent jump between 2019 and 2020 and the 56 percent jump between 2015 to 2016 under Obama stand out in Figure 10. Obama’s 2016 record shattered 2013’s then-peak of 26,417 by 46 percent. Those bursts under both Obama and Trump are consistent with the longstanding bipartisan midnight rule tradition (arguably in part deregulatory in Trump’s case). Also notable is the drop of 51 percent between Obama and Trump; the drop between Trump and Biden remains to be seen.

Although there are more relevant measures than page counts of final rules to account for actual effects or burdens, for page counts to drop so steeply between administrations, or to jump at transition time, is significant.

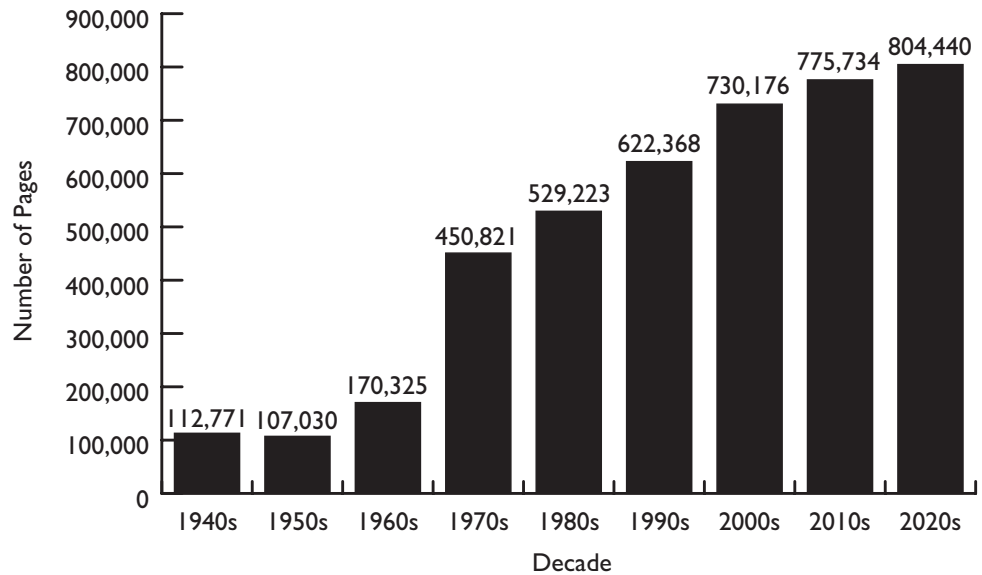
Also relevant to the discussion about monitoring future regulatory costs are the pages of proposed, as opposed to final, rules in the regulatory pipeline. These can be a leading indicator heralding growth or decline in the number of future final rules. While not depicted here, the number of pages devoted

to proposed rules peaked at 23,193 in 2011, while Obama’s final page count of proposed rules was 21,457 in 2016. Under Trump, *Federal Register* pages devoted to proposed rules in 2017 cratered to 10,892—half the level of Obama’s concluding years and the lowest since 1981. These rose to 17,246 in 2018. At the end of 2020, the number of that year’s *Federal Register* pages devoted to proposed rules stood at 19,984. For comparison, all Obama years, apart from the first, exceeded 20,000.

***Federal Register* Pages Published by Decade**

Still another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). Even with Trump-era rule reductions, a hefty jump over the prior decade is apparent. The second-to-last bar of Figure 11 shows that the just-ended decade of the 2010s saw 775,734 new *Federal Register* pages, for an average of 77,573 pages added per year.

Figure 11. *Federal Register* Pages per Decade
775,734 Pages Published in the 2010s



Source: National Archives and Records Administration, Office of the Federal Register.

2000–2019 averaged 77,573 annual pages.

The prior decade had yielded 730,176 pages and an average of 73,018 pages per year. Trump’s final year total and Biden’s first year total of *Federal Register* pages averages out to 80,444 pages per year. Figure 11 extrapolates that for the decade, implying that one might expect at least 804,440 pages in the current decade, and perhaps expect them to top a cumulative 1 million, given increases seen over the prior decades. That expectation is reinforced by the shift in federal regulatory policy asserted in Biden’s “Modernizing Regulatory Review” directive,⁴²⁶ “climate crisis” regulatory campaign,⁴²⁷ and Inflation Reduction Act-related spending and regulation.

Number of Final and Proposed Rules in the *Federal Register*

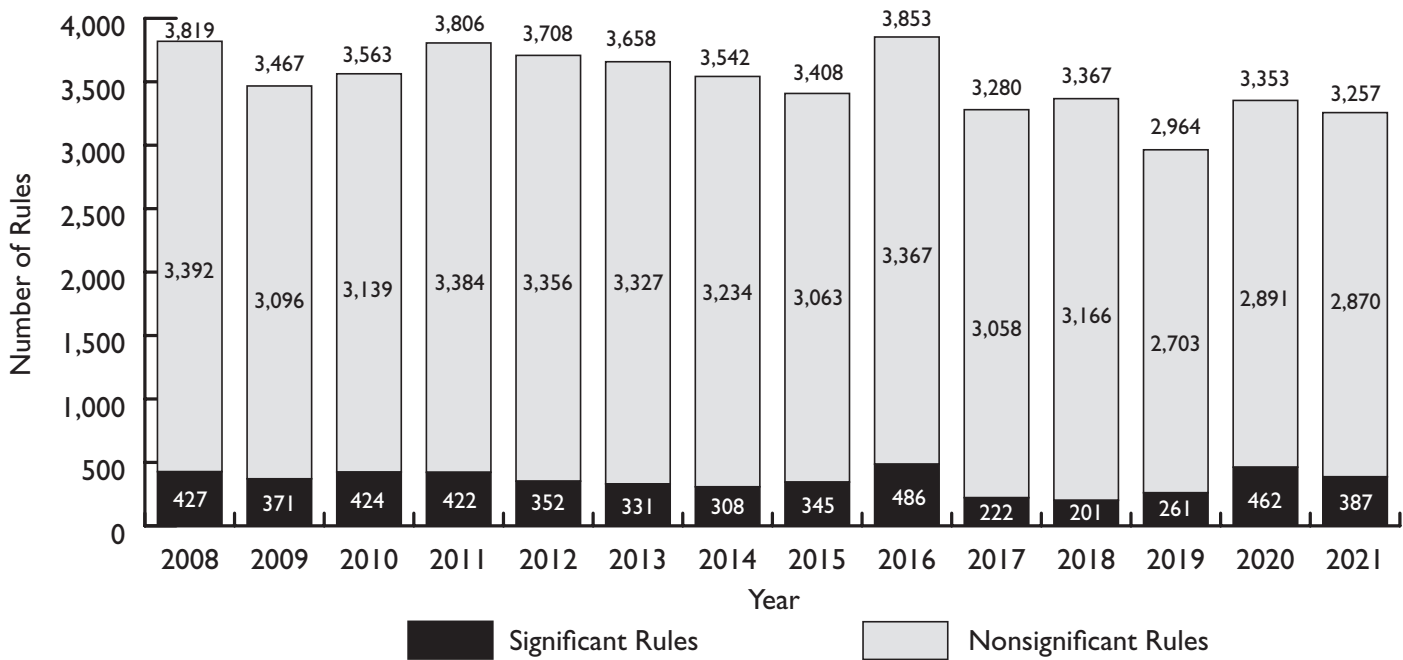
While rules are an important gauge of regulation, they are becoming increasingly less definitive, as guidance documents and sub-regulatory pen-and-phone decrees assume prominence. The 74,532 pages in the *Federal*

Register in 2021 yielded 3,257 final rules, one of the lowest levels ever (see Figure 12). That’s 96 fewer than the 3,353 final rules issued during the Trump administration’s final year.

Despite the noted emergence of a near-record 2020 *Federal Register*, the Trump administration managed to reduce the annual number of rulemakings in each of its four years to the lowest levels then recorded. Biden’s count is also a record low, although his administration’s rules have had no deregulatory objectives. Even with Trump’s record 86,356 *Federal Register* page count upon exit, until Biden, his 3,353-rule tally (again, some deregulatory) was lower than every other president since record keeping began in the 1970s. Biden’s low count can be regarded as offset by the approximately 202 final rules (some of which were deregulatory) attributable to Trump between New Year’s Day and Inauguration Day in 2021, which, subtracted from Biden’s 3,257, gives Biden a net of 3,055 rules.

Trump’s lower counts and deregulatory intent were major defining elements of his admin-

Figure 12. Number of Final Rules in the *Federal Register*, 2008–2021



Source: Compiled by author using *Federal Register*.

istration, and along with Biden’s low tally, stand out in Figure 12. Under Trump, final rules dipped to 3,280 in 2017, the then-lowest count since records began being kept. Additionally, Obama had issued 207 rules in January 2017 before Trump’s inauguration, leaving Trump with a “net” of 3,074 at the time.⁴²⁸ Trump’s 2,964 rules in 2019 (again, some deregulatory in character that would nonetheless increase final rule counts) made for the lowest rule count ever, and the only count below 3,000 since record keeping began in the 1970s. The midnight rule flurry notwithstanding, even Trump’s bloated final tally was exceeded by all other presidents apart from Biden. The *Federal Register* does not distinguish between rules that are regulatory or intended to be deregulatory, nor was there direct mapping between the Unified Agenda’s deregulatory items and the *Register* during the Trump years. Trump’s slowed pace of traditional rulemaking was offset by his affinity for regulations in antitrust, trade, tech policy, family leave, social policy, and other areas that may not appear as rules in the *Federal Register*, and are not readily tracked in OMB reviews.

The Inflation Reduction Act is similarly apt to be absent or immune from OMB tracking.

The number of final rules currently being published is lower than it was throughout the 1990s, when the average annual total of final regulations was 4,613. The average for the period 2000–2009 was 3,984. A trend toward fewer but larger rules may be underway, perhaps partly supplemented with sub-regulatory guidance.⁴²⁹ In 2016, the final full year of the Obama administration, the number of final rules published in the *Federal Register* reached 3,853. That was the Obama administration’s highest total and the highest level since 2005. Even Trump’s highest counts, and Biden’s first year, fall well below those levels. Of course, not all rules are created equal, and fewer of Obama’s rules and even fewer of Biden’s would be expected to have been devoted to streamlining like Trump’s one-in, two-out directive. (For the numbers of proposed and final rules, “significant” proposed and final rules, and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

Trump’s slowed pace of traditional rulemaking was offset by his affinity for regulations in antitrust, trade, tech policy, family leave, social policy, and other areas.

The fact that records of proposed and final rules were not kept until the latter half of the 1970s is indicative of the need for greater regulatory accountability.

Among the thousands of rules each year, a subset designated “economically significant” are those deemed to impose \$100 million in annual effects; these will be addressed in the upcoming discussion of the Unified Agenda of regulations.⁴³⁰ Rules deemed “significant” under Executive Order 12866 are depicted in Figure 12. Among Biden’s 3,257 rules, 387, or 12 percent, were deemed significant. Biden’s significant rule counts appear to be edging back up to the levels seen during the Obama and Bush administrations after the Trump reprieve. The highest count of significant rules over the past two decades was in 2016 under Obama, when, among 3,853 final rules, 486 were deemed “significant.” While several hundred “significant” final rules each year are common, that changed under the Trump administration. Pre-inauguration months aside, Obama’s eight years brought 3,039 significant rules, an annual average of 380, which is close to Biden’s 387 in 2021. Trump, on the other hand, issued a total of 1,146 significant rules, which amounts to an annual average of 287, with 68 percent of them occurring in the final “midnight” year alone.⁴³¹

While the Trump administration’s emphasis was often on significant rules and their removal, such rules were still implemented during Trump’s tenure. Yet a lower base level of rulemaking, significant and non-significant, prevailed that will merit future comparison with not just predecessors but also successors.⁴³²

More detailed analysis of proposed rules, on an ongoing basis, can add some clarity to future expected regulatory cost burdens. Stopping or slowing incomplete proposed rules in the pipeline is easily done, and all recent presidents have done so, which is easier than eliminating existing rules. Figure 13 surveys proposed rules for recent years.

The year 2021 concluded with 2,094 proposed rules in the *Federal Register*, 272 of them deemed significant. Some of these appeared through January 19, the Trump administration’s last day, giving Biden a lower net mirroring the 2009 drop seen in Figure 13 during Obama’s first year. In Obama’s final year of 2016, 2,391 proposed rules ap-

peared in the *Federal Register* (Figure 13). In Trump’s first year, the proposed rule count fell to 1,837 (including the approximately 156 issued by Obama during the first three weeks of 2017), a tally that remains the lowest since record keeping began in the 1970s.

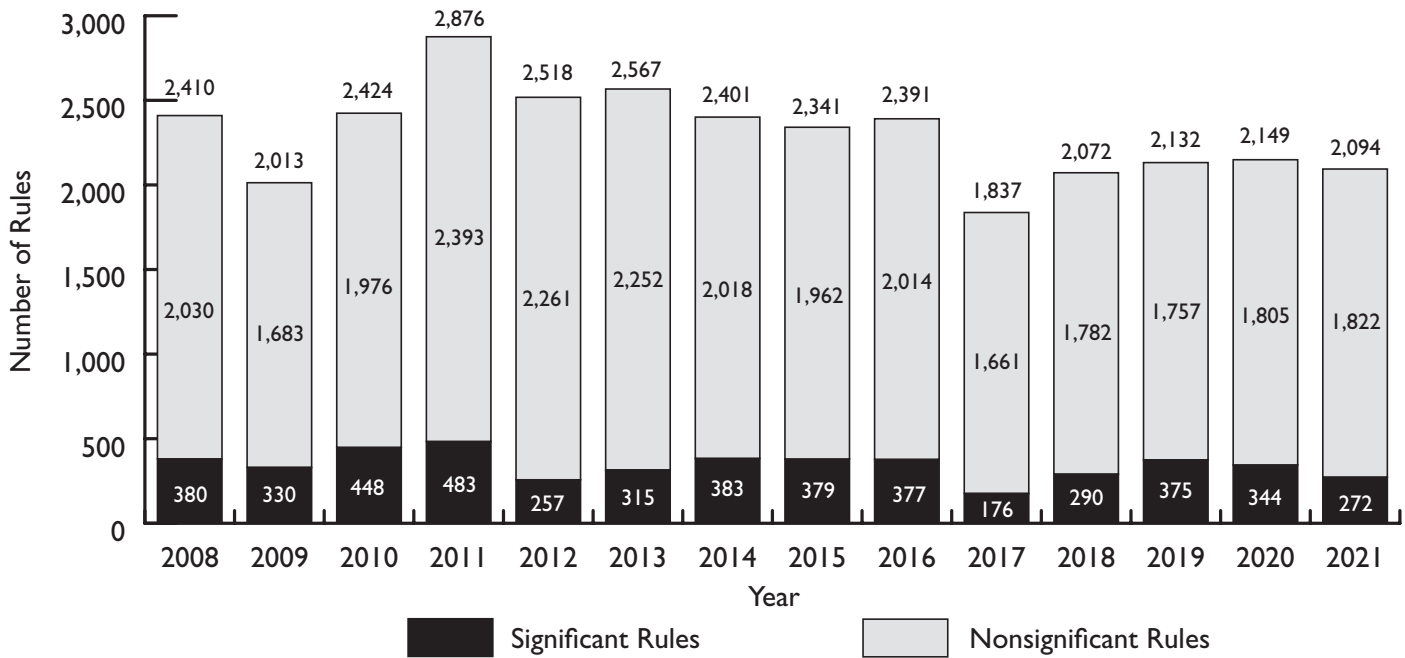
Significant proposed rules in the Trump years made up a hefty percentage of the total proposed, as did those of other administrations, but these did not materialize as higher numbers of final regulatory rulings for Trump, as the foregoing discussion on final rules covered.⁴³³ Trump’s midnight rule activity in 2020 notwithstanding, his levels of proposed rules, which averaged 2,048 annually, never attained the heights of the earlier Obama and Bush years depicted in Figure 13 (apart from the 2009 Obama count of 2013). Indeed, in previous decades, considerably greater numbers of proposed rules appeared in the annual pipeline. The average in the 1990s was 3,150 per year; the average in the 2000s was 2,689 annually (see Appendix: Historical Tables, Part B). Based on agencies’ Unified Agenda contributions in 2021, the Heritage Foundation notes the presence of dozens of noteworthy rules anticipated but not yet proposed and with variable timelines in five common categories: (a) education, (b) energy and environment, (c) financial, (d) labor and housing, and (e) miscellaneous.⁴³⁴ Some of these seek fulfillment of progressive aims like student loan debt relief; corporate board diversity; financial institution lending disclosures; housing policy; energy efficiency mandates; restrictions on coal, oil, and gas leasing; and other environmental regulations.

The fact that records of proposed and final rules were not kept until the latter half of the 1970s—three decades after the Administrative Procedure Act became law—is indicative of the need for greater regulatory accountability.

Cumulative Final Rules in the *Federal Register*

As noted, Biden’s recent 2021 final rule count of 3,257 was lower than Trump’s final

Figure 13. Number of Proposed Rules in the *Federal Register*, 2008–2021



Source: Compiled by author using *Federal Register*.

year flurry, while Trump’s 2019 final rule count of 2,964 is the only rule count below 3,000. The annual outflow of over 3,000 final rules has resulted in the issuance of 114,821 rules since 1993—when the first edition of *Ten Thousand Commandments* was published—through the end of 2021 (see Figure 14). Since 1976, when the *Federal Register* first began itemizing rules, 211,911 have been issued (see Appendix: Historical Tables, Part B). Since 1996, the year the Congressional Review Act was passed, 95,848 rules have been issued. The 20 rules repealed thus far by Congressional Review Act resolutions of disapproval represent only 0.02 percent of the total number of rules issued to date.⁴³⁵

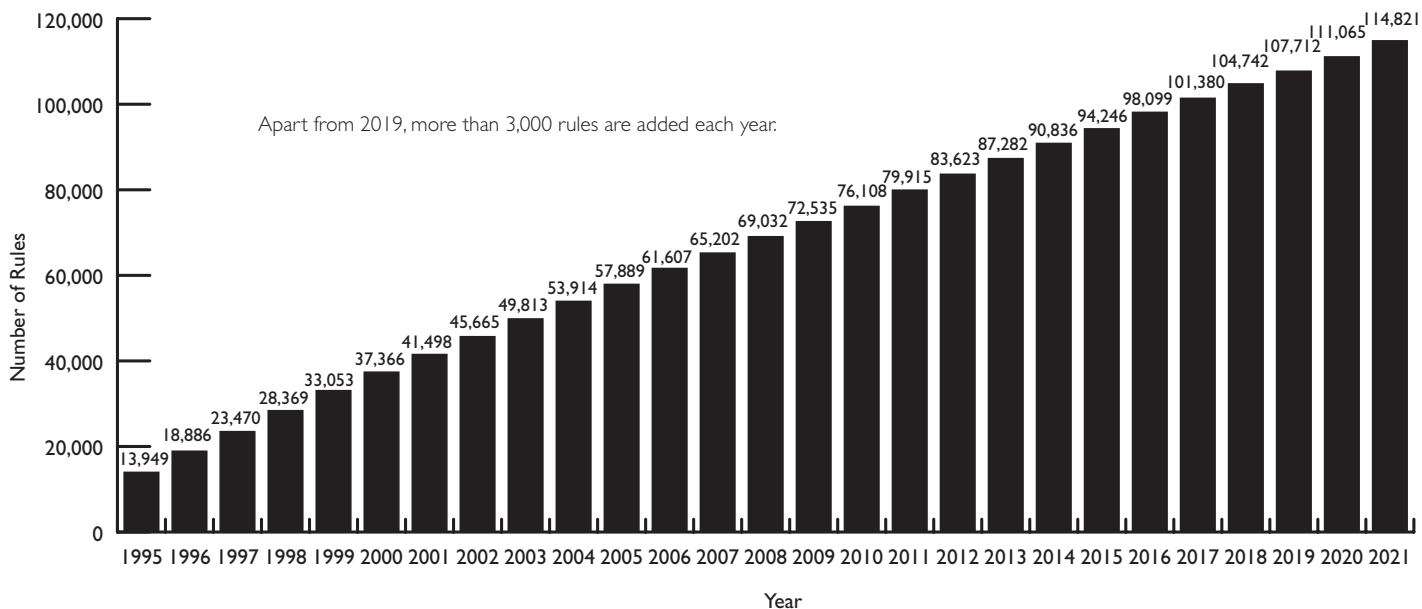
The Expanding Code of Federal Regulations

The page count for final rules in the *Code of Federal Regulations* (CFR) is not as dramatic

as the yearly count of tens of thousands of pages in the *Federal Register*, but it is still considerable. In 1960, the CFR contained 22,877 pages. Since 1975 until the end of 2019, its total page count had grown from 71,224 to 185,984, including the index—a 161 percent increase. As of the end of 2019, the number of CFR bound volumes stood at 242, compared with 133 in 1975. (See Figure 15. For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

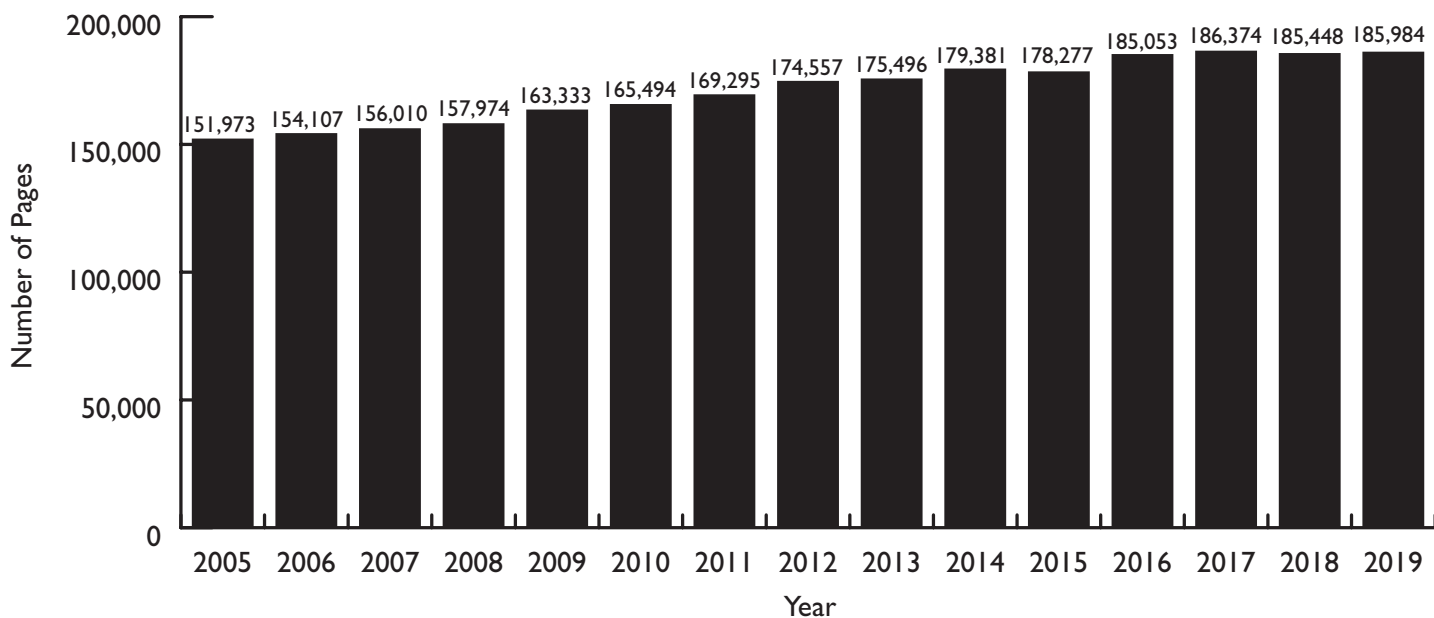
As noted, in recent years, traditional rules and regulations have been supplemented in significant part by various forms of executive actions and regulatory guidance documents. Those are important to track, but there is no CFR-style repository for them. Trump’s 2020 Executive Order 13981, “Promoting the Rule of Law through Improved Agency Guidance Documents,” began the process of creating an inventory, but Biden interrupted that effort.⁴³⁶

Figure 14. Accumulation of Final Rules Published in the *Federal Register*, 1995–2021



Source: National Archives and Records Administration, Office of the Federal Register.

Figure 15. *Code of Federal Regulations*, 185,984 Total Pages in 2019, 2005–2019



Source: National Archives and Records Administration, Office of the Federal Register.

The Presidential Dimension of Regulatory Dark Matter: Executive Orders and Memoranda

Executive orders, presidential memoranda, and other executive actions make up a large component of executive “lawmaking.” They merit attention from lawmakers, since they can have, or appear to have, binding effect and influence private behavior.⁴³⁷ Executive orders ostensibly deal with the internal workings and operations of the federal government, and presidents have traditionally been presumed able to overturn those issued by their predecessors. Their use is not new, dating back to President George Washington’s administration.⁴³⁸ Since the nation’s founding, presidents have issued more than 15,582 executive orders (see Table 4). However, their reporting and numbering have not been consistent until recent decades.

Biden’s 77 executive orders in 2021 were the most seen in recent decades. Sixteen issued by Trump in the final weeks of his term in January brought the total for 2021 to 93 (see Figure 16). Trump had issued 68 executive orders in 2020, the highest level in 25 years, outstripping anything since 2001’s high-water mark of 67 (as a transition year, 2001 included 14 Clinton orders and 53 Bush ones). Trump had issued 63 in 2017, 47 in 2019, and 35 in 2018.⁴³⁹

President Obama’s executive order totals, “pen-and-phone” directives notwithstanding, were not high compared with those of other presidents. At the end of his term, Obama had issued 276 executive orders, whereas

Table 5. Executive Orders by Administration

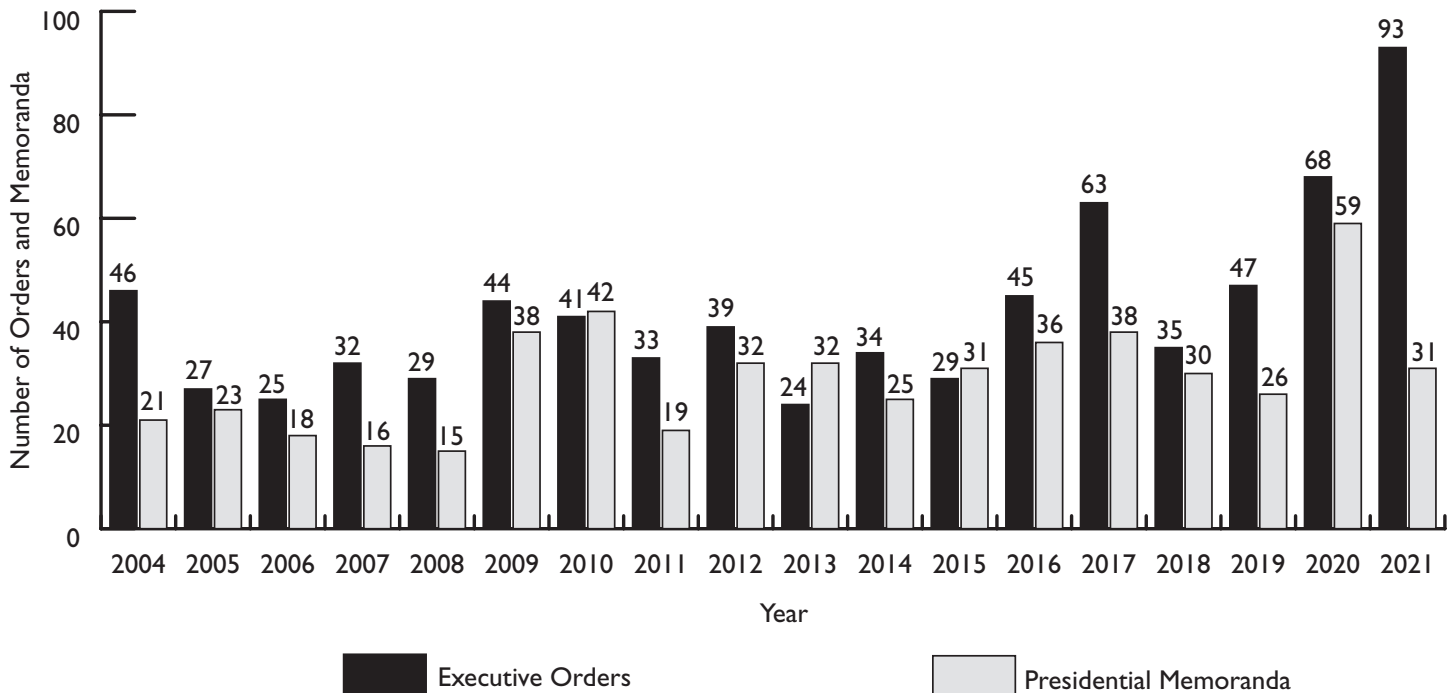
	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
George Washington	n/a	n/a	8
John Adams	n/a	n/a	1
Thomas Jefferson	n/a	n/a	4
James Madison	n/a	n/a	1
James Monroe	n/a	n/a	1
John Quincy Adams	n/a	n/a	3
Andrew Jackson	n/a	n/a	12
Martin van Buren	n/a	n/a	10
William Henry Harrison	n/a	n/a	0
John Tyler	n/a	n/a	17
James K. Polk	n/a	n/a	18
Zachary Taylor	n/a	n/a	5
Millard Fillmore	n/a	n/a	12

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
Franklin Pierce	n/a	n/a	35
James Buchanan	n/a	n/a	16
Abraham Lincoln	n/a	n/a	48
Andrew Johnson	n/a	n/a	79
Ulysses S. Grant	n/a	n/a	217
Rutherford B. Hayes	n/a	n/a	92
James Garfield	n/a	n/a	6
Chester Arthur	n/a	n/a	96
Grover Cleveland - I	n/a	n/a	113
Benjamin Harrison	n/a	n/a	143
Grover Cleveland - II	n/a	n/a	140
William McKinley	n/a	n/a	185
Theodore Roosevelt	n/a	n/a	1,081
William Howard Taft	n/a	n/a	724
Woodrow Wilson	n/a	n/a	1,803
Warren G. Harding	n/a	n/a	522
Calvin Coolidge	n/a	n/a	1,203
Herbert Hoover	6,070	5,075	996
Franklin D. Roosevelt	9,537	6,071	3,467
Harry S. Truman	10,431	9,538	894
Dwight D. Eisenhower	10,913	10,432	482
John F. Kennedy	11,127	10,914	214
Lyndon B. Johnson	11,451	11,128	324
Richard Nixon	11,797	11,452	346
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H.W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,984	13,765	220
Joe Biden	14,061	13,985	77
Total Number of Executive Orders			15,582

Source: Author's tabulations; Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; "Executive Orders," The American Presidency Project, ed. John T. Woolley and Gerhard Peters (Santa Barbara, CA: 1999–2014), <http://www.presidency.ucsb.edu/data/orders.php>.

n/a = not applicable or not available.

Figure 16. Number of Executive Orders and Presidential Memoranda, 2004–2021



Source: National Archives and Records Administration, Office of the Federal Register.

President George W. Bush’s final tally was 291, while that of President Bill Clinton was 364 (see Table 4 and Figure 16).

Executive memoranda are trickier to tally.⁴⁴⁰ They may or may not be published in the *Federal Register* or other easily accessible sources, depending on each administration’s own determination of “general applicability and legal effect,” and are not numbered the way executive orders are now. There were 31 memoranda in 2021, 26 from Biden and five from Trump.⁴⁴¹

Recognizing the overlap that occurs in transition years, during the eight calendar years encompassing President George W. Bush’s presidency, 129 memoranda were published in the *Federal Register*, whereas the Barack Obama years saw 255 issued (Figure 16). Bill Clinton published 84 during his presidency that have been recorded so far.⁴⁴² Donald Trump issued 152 during his term. Trump’s 59 memoranda issued in 2020 is the high-

est single-year count to appear in the *Federal Register* database, which records totals back to 1994 (2010’s 42 comes in second).⁴⁴³ But again, some directives issued by Trump were deregulatory in intent. Furthermore, the *Federal Register* is not a complete compendium of executive actions.

The pertinent question regarding federal intervention is what these executive orders and memoranda are used for and what they do. Whether lengthy or brief, orders and memoranda can have significant effects, and a smaller number of them do not necessarily mean small effects. We find presidents invoking such executive actions if Congress fails to act on their agenda. As with the *Federal Register* rule counts, the tallies of orders and memoranda are interesting but do not tell the full story. In 2014, Obama administration memoranda (not even among the presidential ones shown here) created a new financial investment instrument, implemented new positive rights regarding work

The pertinent question is what executive orders and memoranda are used for and what they do.

The United States existed for several decades before a president issued more than two dozen executive orders.

hours, and employment preferences for federal contractors.⁴⁴⁴ In contrast, four of Obama’s executive orders addressed over-regulation and rollbacks,⁴⁴⁵ such as Executive Order 13563 on regulatory review and reform.⁴⁴⁶ It amounted to a few billion dollars in cuts, which were swamped by other, newly issued rules and guidance.

While nothing comparable to Trump’s deregulatory agenda was implemented, key executive orders directed at regulatory restraint were President Bill Clinton’s 1993 Executive Order 12866⁴⁴⁷ and President Ronald Reagan’s Executive Order 12291, which formalized central regulatory review at OMB.⁴⁴⁸ Clinton’s was a step back from the stronger oversight of the Reagan order in that it sought “to reaffirm the primacy of Federal agencies in the regulatory decision-making process.”⁴⁴⁹

The United States existed for several decades before a president issued more than two dozen executive orders. That was President

Franklin Pierce, who served from 1853 to 1857. Orders numbered in the single digits or teens until President Abraham Lincoln and the subsequent Reconstruction period. President Ulysses S. Grant issued 217, then a record. From the 20th century onward, executive orders have numbered over 100 during each presidency and sometimes reached into the thousands. President Franklin D. Roosevelt—the longest-serving president in U.S. history, elected to four terms and having served a full three—issued 3,721 executive orders.⁴⁵⁰ Table 4 provides a look at executive order counts by administration since the nation’s founding through the Trump presidency.⁴⁵¹

In addition to the notices and executive orders that appear in the *Federal Register*, there are pronouncements on the periphery. As in the Obama years, we see numerous “Fact Sheets,” such as one accompanying the aforementioned Justice Department meat processing directive.⁴⁵²

Another Dimension of Regulatory Dark Matter: Over 21,000 Agency Public Notices Annually

Along with presidential proclamations are those of departments and agencies. Without actually passing a law, government can signal expectations, specify parameters for, and influence various industries—including health care, retirement, education, energy production, finance, land and resource management, science and research, and manufacturing—through various kinds of guidance documents. A prominent Obama-era example is the Internal Revenue Service’s granting of waivers of the Patient Protection and Affordable Care Act’s employer mandate, despite the statute’s language.⁴⁵³ In one assessment of guidance documents, a 2018 report by the House Committee on Oversight and Government Reform found at least 13,000 guidance documents that had been issued since 2008.⁴⁵⁴ Trump sought to address these in 2019 via Executive Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents,” which established inventories of guidance documents by way of required online rule portals at each agency. The overall count, far from complete, eventually topped 70,000, which is derived from this author’s September 2020 survey of agency portals.⁴⁵⁵ These portals and disclosures were eliminated by Biden.

In addition to the *Federal Register*’s final and proposed rules, public notices issued throughout the year also appear in the *Federal Register*. These typically consist of non-rulemaking documents such as meeting and hearing notices and agency organizational material. The tens of thousands of yearly public notices can also include memoranda, bulletins, guidance documents, alerts, and other proclamations that may be consequential to the public.⁴⁵⁶ Reporting of guidance

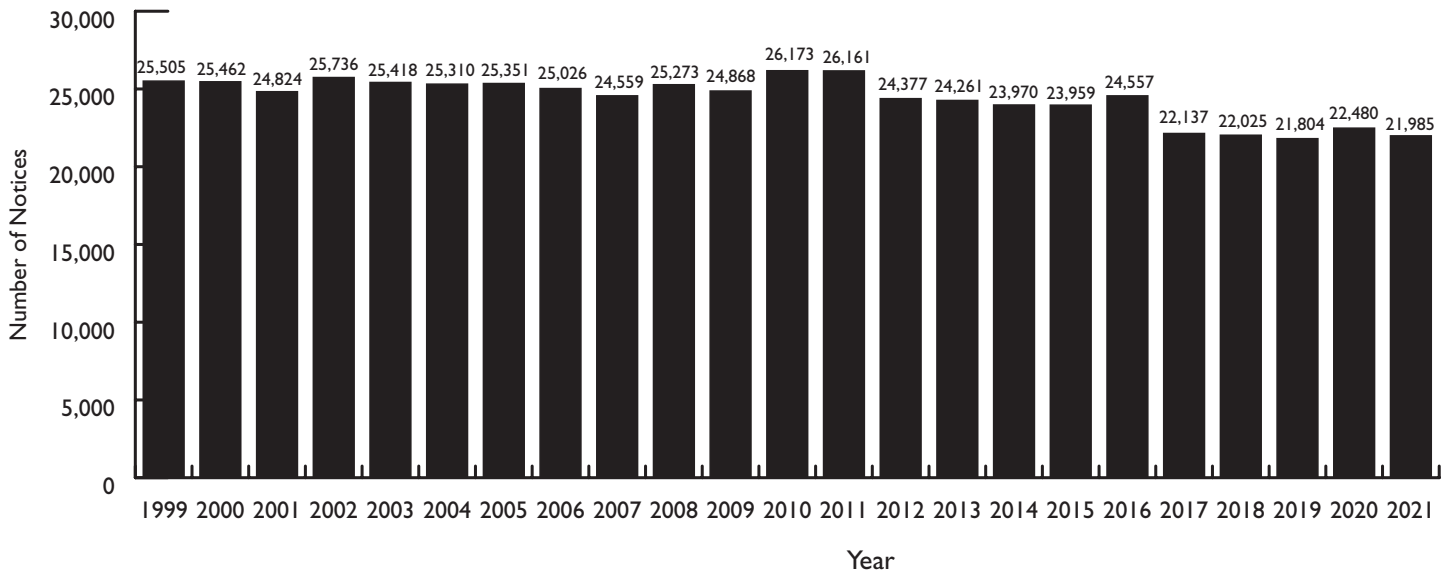
in the *Federal Register* was never reconciled with agencies’ guidance document portals prior to Biden’s elimination of the project. There simply was not enough time, although doing so could be a goal for a future administration.

Figure 17 depicts the number of notices published annually in the *Federal Register*. They peaked at over 26,000 during the period 2010–2011. Standing at 21,985 at the end of 2021, these notices have dipped below 24,000 only seven times since 1996, including during Trump’s term; the other years were 2014 and 2015. There have been 661,900 public notices since 1994 and well over one million since the 1970s, but many of those are trivial.

Yet, notices are not always trivial. Policy makers should pay greater attention to the “notices” component of the *Federal Register* given the tendency for regulation to advance via memorandum, notice, letter, bulletin, and other means. Increased unilateral executive proclamations, atop traditional rules and regulations, will render costs and effects of regulation even less transparent than they already are, especially if they do not appear in the *Federal Register*. For example, as the House Oversight Committee detailed in the 2018 report, *Shining Light on Regulatory Dark Matter*, of at least 536 known significant guidance documents issued since 2008, only 328 were submitted to OMB for review.⁴⁵⁷ Furthermore, while more than 13,000 guidance documents should have been submitted to both Congress and to the Government Accountability Office as required by the Congressional Review Act, only 189 had been.⁴⁵⁸ The Trump-era portals could have added clarity.

Without passing a law, government can influence various industries through various kinds of guidance documents.

Figure 17. Public Notices in the *Federal Register*, 1999–2021



Source: National Archives and Records Administration, Office of the Federal Register.

21,985 notices in 2021; 660,920 since 1994.

A Note on Notice and Rule Reviews at OMB’s Office of Information and Regulatory Affairs

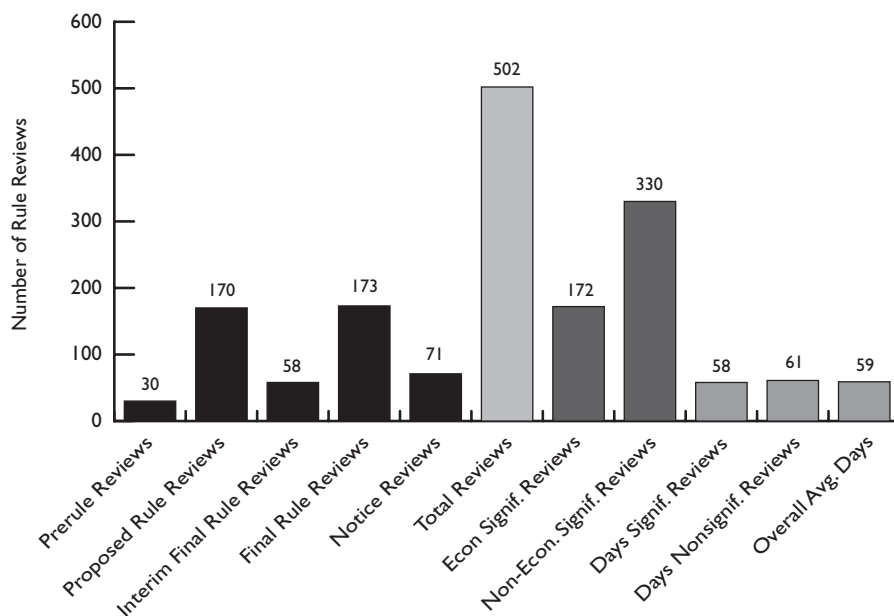
Tracking the effects of rules and regulations, executive orders, memoranda, and regulatory guidance is vital. These alternative regulatory actions have become powerful means of working around the constitutional system of government envisioned by the Framers: legislation enacted by elected representatives.

Figure 18 presents the number of rule reviews conducted by the Office of Management and Budget during calendar year 2021, totaling 502, broken down by stage and by economic significance. There had been 669 total reviews under Trump. Figure 18 also shows the number of days it

took OMB to review significant and non-significant rules and regulations, a process that improved recently but can take several months compared with the roughly two months shown here. Interim final rules reviewed by OMB, now standing at 58, had numbered only 11 and 12 in Trump’s first two years (see Figure 18 and Appendix: Historical Tables, Part D).

The president and Congress can ensure that more review and supervision of guidance documents and notices take place. As it stands, while agencies issued thousands of notices, Figure 18 shows that only 71 were reviewed by OMB during calendar year

Figure 18. Number of OMB Rule Reviews and Average Days under Review, 2021



Source: Author search on RegInfo.gov, “Review Counts” database search engine under Regulatory Review heading.

2021, down from 104 in 2020. Low as these are, they are still higher than the few dozen seen most years since 1993. A history of the number of rules and notices reviewed annually by the White House Office of Information and Regulatory Affairs appears in Appendix: Historical Tables, Part D, which presents a detailed breakdown of rules reviewed by type and by average days for review from 1991 through 2021.

There had been 24 notice reviews in Trump's first year, and 45 during 2016, Obama's last full year. Furthermore in recent years, while not shown in these charts, OMB has reviewed several dozen notices that it deemed to have economically significant effects.⁴⁵⁹

During the pre-Executive Order 12866 years of 1991–1993 (depicted in Appendix: Historical Tables, Part D), rule review times were shorter than today, although numbers of rules were considerably higher then. During the Trump administration's first 18 months, OIRA reviewed 70 percent fewer regulatory actions than during the Obama administration and 66 percent fewer than during the George W. Bush administration.⁴⁶⁰ That shifted in part during the second half of the Trump administration, since 669 rule reviews in 2020 was the highest number seen since 2010, and the 199 economically significant subset of rules reviewed in 2020 was the highest ever. Under Biden, 2021's economically significant rules reviewed stood at 172 (Figure 17).

Analysis of “The Regulatory Plan and Unified Agenda of Federal Regulations”

“The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Agenda) is the document in which agencies have outlined their priorities since the 1980s. Along with the *Federal Register*, the Agenda is one of the few limited and imperfect tools available for regulatory disclosure. Much could be done to improve the quality of the information compiled within it.

The Agenda normally appears in the *Federal Register* each fall and, minus the regulatory plan component, in the spring, as well as on an online searchable database. However, the publication of the Unified Agenda has become erratic in recent years, suffering delays in its traditional April and October schedule, much as the annual report to Congress on regulatory costs and benefits has been chronically late.⁴⁶¹ The Trump administration released the fall 2020 edition of the twice-yearly Agenda in November; the Biden OMB released the fall 2021 edition on December 10.⁴⁶² While the Agenda appears with little public fanfare, elections and other considerations by administrations, such as reporting priorities, can prompt agencies to either accelerate or slow down rulemaking or to report fewer rules, thereby affecting the Agenda’s content and bulk.

The year 2017 saw the beginning of Trump’s one-in, two-out directive for federal agency rulemaking by way of Trump’s Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The normally staid Agenda release was accompanied during the Trump years with White House statements touting progress on meeting goals for regulatory streamlining and media events

complete with red-tape props⁴⁶³ and a *Wall Street Journal* op-ed by then-OIRA Administrator Neomi Rao.⁴⁶⁴ A reversal has occurred under Biden, with both the spring and fall editions accompanied by proclamations of solidarity with the broader progressive agenda and an abandonment of any emphasis on an oversight role questioning regulatory initiatives.

The Agenda breaks down rules along three categories:

- Rules recently completed
- Rules anticipated or prioritized in the upcoming 12 months
- Longer-term rules by over 60 federal departments, agencies, and commissions

As a compilation of agency-reported federal regulatory actions at several stages, one might regard the Agenda as a cross-sectional snapshot of the following actions moving through the regulatory pipeline:

- Active actions: prerule actions, proposed and final rules; rules in the production process
- Completed actions: actions completed during the previous six months
- Long-term actions: anticipated longer-term rulemakings beyond 12 months

Along with those affecting the private sector, many rules in the Unified Agenda affect operations of state and local governments, either directly or indirectly. The rules contained in the Unified Agenda often carry over at the same stage from one year to the next, or they may reappear in subsequent editions at different stages. In the fall 2021 edition, 495 of

Along with those affecting the private sector, many rules in the Unified Agenda affect operations of state and local governments.

the Active actions appeared for the first time, compared with 444 a year earlier.

Observers, such as regulatory expert Leland Beck, have long recognized the inconsistent and subjective nature of the Agenda's contents, that it "provides only a semi-filtered view of each agency's intentions," and that it "reflect[s] what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld."⁴⁶⁵ While agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda, that temporarily changed under the Trump administration, which instructed:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.⁴⁶⁶

As noted, rules and content fluctuate given administration priorities, and sometimes top-down reversals in reporting emphasis occur. Another example occurred during the Obama administration, when spring and fall 2012 guidelines from then-OIRA Administrator Cass Sunstein called on agencies to "please consider terminating" the listing of stalled long-term entries until action appears more likely.⁴⁶⁷ That became the more direct "please remove" in 2013.⁴⁶⁸ (The drop in the number of rules appearing in the Agenda at that time is apparent in Figure 19 in the next section.) The retention of long-term rules reversed in 2017 during the Trump administration, with OIRA leadership instructing agency heads that the administration sees "merit in their continued inclusion" where "listing of such entries still benefits readers."⁴⁶⁹

Healthy skepticism is justified regarding the counts in the Unified Agenda, given the lack

of uniformity with respect to its content and strategic timing of issuing of rules by different administrations. While the political and policy climate can affect what appears in the Agenda, it nonetheless gives regulated entities and researchers a sense of the flow in the regulatory pipeline.

3,777 Rules in the Fall 2021 Unified Agenda Pipeline

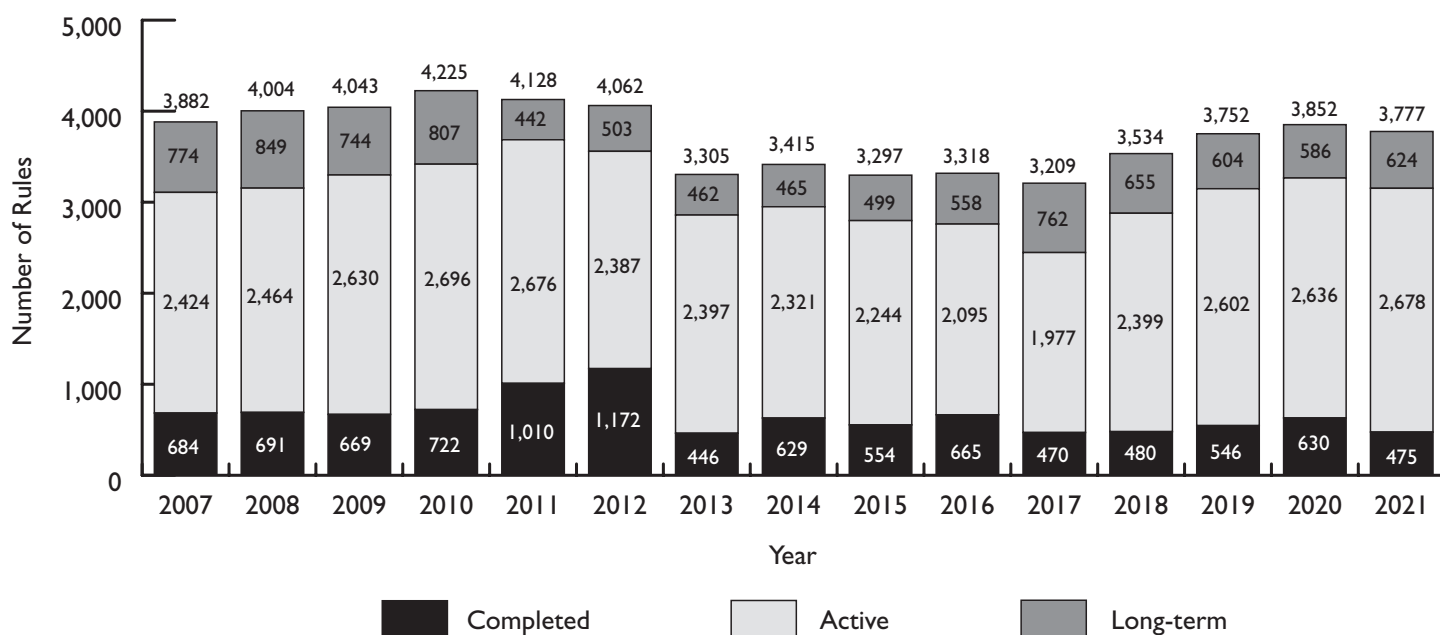
The fall 2021 "Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions" found 68 federal agencies, departments, and commissions listing 3,777 regulations in the active (prerule, proposed, and final), just-completed, and long-term stages, many of which had been in the pipeline for some time (see Figure 19).⁴⁷⁰ The gross tally of 3,852 a year ago was easily Trump's highest, and indeed the highest since 2012 under Obama; however 653 rules in the fall 2020 pipeline had been deemed "Deregulatory," for a "net" of 3,199. The fall 2017 Agenda pipeline of 3,209 contained the fewest rules since 1983, even without counting that edition's 540 deregulatory entries. (For a partially complete history of the numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

As Figure 19 illustrates, the overall Unified Agenda pipeline exceeded 4,000 rules (active, completed, and long-term) each fall between 2008 and 2012. Counts were even higher in the 1990s, when an all-time high count of 5,119 rules occurred in the fall 1994 Agenda. The sharp 19 percent drop under Obama from 4,062 rules in 2012 to 3,305 in 2013 seems to reflect, at least in part, election year considerations predominant at the time.⁴⁷¹

The total count of 3,777 rules in the pipeline depicted in Figure 19 is broken out in detail in Table 5 by issuing agency, commission, or department. It shows numbers of rules at the active, completed, and long-term stages. The question of which agencies are responsible for the hundreds of annual rules

Rules and content fluctuate given administration priorities, and sometimes top-down reversals in reporting emphasis occur.

Figure 19. Total Agency Rules in the Fall *Unified Agenda* Pipeline, 2007–2021



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, consecutive years, and database at <http://reginfo.gov>.

“Active” rules consist of rules at the pre-rule, proposed, and final stages.

that are deemed “Deregulatory” is significant for assessing Trump’s one-in, two-out regulatory campaign. (These were depicted in separate columns in Table 5 in the prior four editions of *Ten Thousand Commandments*, but that designation is not part of the regulatory picture now. For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2001, see Appendix: Historical Tables, Part F. For a closer look at rule categories, see Table 5 and Figure 19.)

Active rules. The number of active rules in the Agenda consistently remained well above 2,000, until it fell to 1,977 in 2017 under Trump, with 448 deemed deregulatory at the time for a far lower “net.” The gross number of active rules rose subsequently to 2,636 in 2020 (when 496 were deregulatory) (see Figure 19). While gross active counts returned to the historical levels seen in Figure 18, they were offset by the several hundred deregulatory rules among them each year under Trump, although the proportion of rulemakings across categories that were explicitly de-

regulatory appeared to decline.⁴⁷² In the fall 2021 edition, the active rule count is back up to 2,678, without deregulatory offsets. The year 2010 was the last time the active rule count was that high.

Long-term rules. In Trump’s first fall Agenda at the end of 2017, long-term rules in the pipeline stood at 762, a jump from 558 in 2016. That may have reflected in part the aforementioned OMB directives to consider disclosing those rules. Thirty of the 762 were deregulatory. The count fell each year between 2018, while the fall 2020 Agenda long-term rule count fell to 586, with 56 deemed deregulatory. With Biden, long-term rules are back up to 624.

Completed rules. Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last Agenda.” Although the number of rules in the completed category in fall Agendas (spring editions are not shown in Figure 18) rose steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent in-

Table 5. Agenda Detail

Agency, Commission, or Department	Number of rules
Department of the Interior	363
Department of the Treasury	360
Department of Transportation	301
Department of Commerce	269
Department of Health and Human Services	235
Environmental Protection Agency	226
Department of Defense	219
Department of Agriculture	175
Department of Homeland Security	160
Department of Energy	138
Department of Justice	118
Department of Labor	98
Federal Communications Commission	87
Department of Veterans' Affairs	85
Small Business Administration	76
Securities and Exchange Commission	74
Department of State	70
Nuclear Regulatory Commission	61
Federal Acquisition Regulation	58
Department of Housing and Urban Development	51
Office of Personnel Management	48
General Services Administration	43
Department of Education	42
Federal Reserve System	31
National Credit Union Administration	30
Federal Deposit Insurance Corporation	29
Consumer Product Safety Commission	22
Federal Energy Regulatory Commission	22
Social Security Administration	22
Federal Trade Commission	19
Commodity Futures Trading Commission	18
Agency for International Development	16
National Indian Gaming Commission	16
Farm Credit Administration	14
Federal Housing Finance Agency	14
Office of Government Ethics	13
Corporation for National and Community Service	11
Pension Benefit Guaranty Corporation	10
CPBSD*	9
Consumer Financial Protection Bureau	9
National Archives and Records Administration	8
Office of Management and Budget	8
Surface Transportation Board	8

Court Sevcies/Offender Supervision, D.C.	7
National Endowment for the Humanities	7
National Transportation Safety Board	7
Railroad Retirement Board	7
National Endowment for the Arts	6
Compliance Board	5
Council on Environmental Quality	5
Federal Maritime Commission	5
Federal Mediation and Conciliation Service	5
National Aeronautics and Space Administration	5
Peace Corps	5
Postal Regulatory Commission	5
National Labor Relations Board	4
National Science Foundation	3
U.S Agency for Global Media	3
Federal Mine Safety and Health Review Commission	2
Federal Permitting Imprmt Steering Council	2
Inter-American Foundation	2
Council of Insp General on Integrity and Eff.	1
Institute of Museum and Library Services	1
National Mediation Board	1
Office of National Drug Control Policy	1
Tennessee Valley Authority	1
U.S. Commission on Civil Rights	1

* Committee for Purchase from People Who Are Blind or Severely Disabled.

crease—they dropped precipitously in 2013 to 462. This category stood at 470 in 2017 and 480 in 2018 in Trump’s fall Agendas for those years, and rose to 546 in 2019 and to 630 in 2020. A significant proportion of Trump’s completed rules were deregulatory (62 in 2017, 94 in 2018, 106 in 2019, and 101 in 2020), for considerably lower nets. These compare to 475 competed rules in the fall 2021 Biden Agenda. The next section looks at completed economically significant rules, taking into account both the spring and fall Agendas to get a full-year picture.

Top Rulemaking Departments and Agencies

A relative handful of executive branch agencies each year account for the greatest num-

ber of the rules in the Agenda pipeline. In the Biden 2021 fall Agenda, the Departments of the Interior, Treasury, Transportation, Commerce, and Health and Human Services are the most active (see Table 6). These top five, with 1,528 rules among them, account for 40 percent of the 3,777 rules in the Unified Agenda pipeline at the moment. The Environmental Protection Agency, with 226 rules, comes in sixth.

The top five independent agencies in the Unified Agenda pipeline by rule count are the Federal Communications Commission, Small Business Administration, Securities and Exchange Commission, Nuclear Regulatory Commission, and the multiagency Federal Acquisition Regulation system (see Table 6).⁴⁷³ Their combined total of 356 rules accounts for 9 percent of the 3,777 rules in the fall Agenda. Combined, the top

A relative handful of executive branch agencies each year account for the greatest number of rules.

Table 6. Top Rule-Producing Executive and Independent Agencies
(From Fall 2021 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Interior	363
2. Department of the Treasury	360
3. Department of Transportation	301
4. Department of Commerce	269
5. Department of Health and Human Services	235
TOTAL	1,528
% of Total Agenda Pipeline of 3,777	40

Independent Agency	Number of Rules
1. Federal Communications Commission	87
2. Small Business Administration	76
3. Securities and Exchange Commission	74
4. Nuclear Regulatory Commission	61
5. Federal Acquisition Regulation	58
TOTAL	356
% of Total Agenda Pipeline of 3,777	9

Top 5 Executives plus Top 5 Independents	1,884
% of Total Agenda Pipeline	50

Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, and database, <http://www.reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

executive and independent agency components, numbering 1,884, make up 50 percent of the total. The percentage was similar during the Trump years, with the difference that some entries then were explicitly deemed deregulatory.⁴⁷⁴

295 “Economically Significant” Rules in the Unified Agenda

A subset of the Unified Agenda’s 3,777 rules is classified as economically significant, which means that agencies estimate their yearly economic effects at \$100 million or more. That generally reflects increased costs, although sometimes an economically significant rule can be intended to reduce costs, which had been the case in Trump’s Execu-

tive Order 13771. As Table 7 shows, 295 economically significant rules from 24 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Figure 20 depicts 2021’s 295 economically significant rules alongside those of the previous decade and a half. The number of economically significant rules in the annual fall pipeline rose under President Obama, topped out twice at 224, and finished out 2016 with 193.⁴⁷⁵ In Trump’s first fall Unified Agenda in 2017, the administration brought the count down by 27 percent, an effect magnified by the fact that 30 of the 140 rules at that time were deemed deregulatory.

For comparison, Biden’s overall tally here exceeds Trump’s final gross count of 261

Table 7. 295 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million or More in Annual Economic Impact, Fall 2021

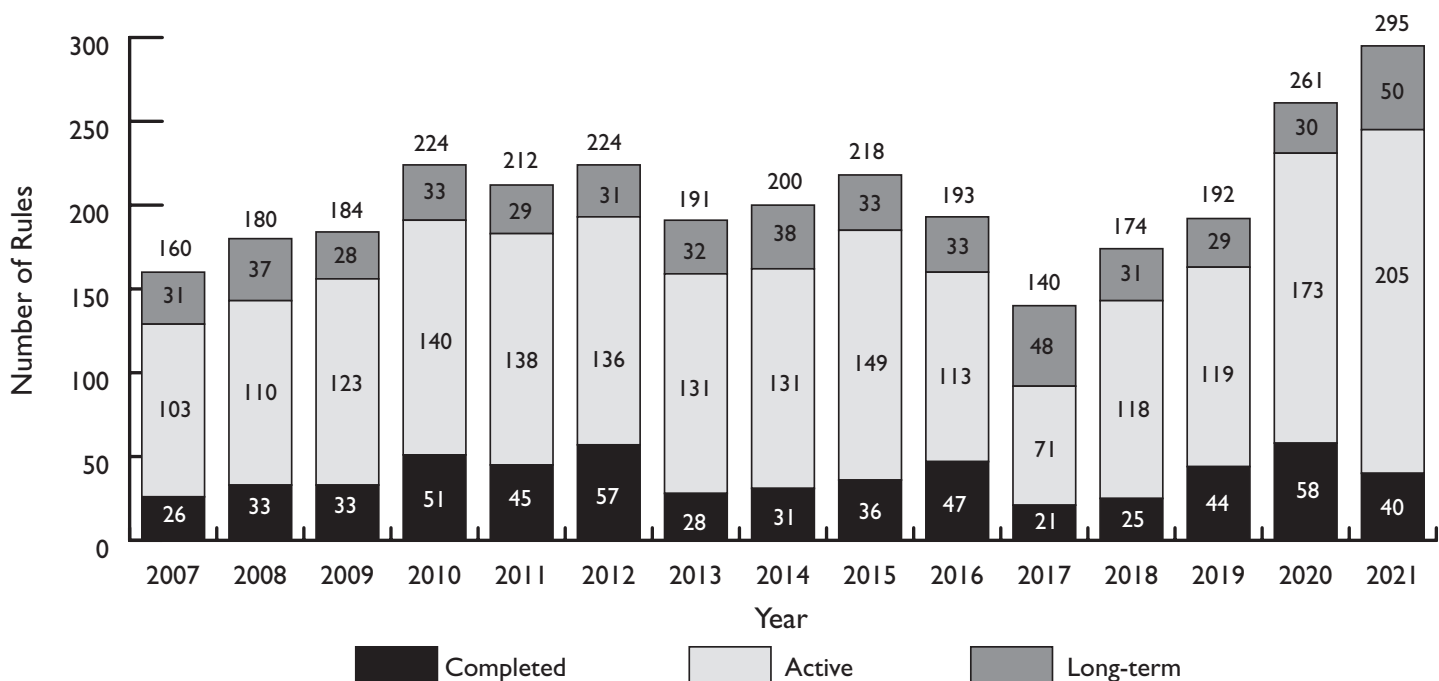
	Rules	Unified Agenda		
		Active	Completed	Long Term
Dept. of Agriculture	17	8	2	7
Dept. of Commerce	2	1	1	
Dept. of Defense	6	4		2
Dept. of Education	16	10	5	1
Dept. of Energy	11	9	2	
Dept. of Health and Human Services	68	44	16	8
Dept. of Homeland Security	18	9	4	5
Dept. of Housing and Urban Development	1	1		
Dept. of the Interior	7	4	2	1
Dept. of Justice	3	3		
Dept. of Labor	22	20		2
Dept. of State	3	2	1	
Dept. of Transportation	16	10		6
Dept. of the Treasury	27	20	2	5
Dept. of Veterans Affairs	11	7	1	3
Consumer Product Safety Commission	2	1	1	
Environmental Protection Agency	16	12	1	3
Federal Acquisition Regulation	1	1		
Federal Communications Commission	6			6
Federal Housing Finance Agency	2	2		
Nuclear Regulatory Commission	3	1	1	1
Office of Personnel Management	4	4		
Pension Benefit Guaranty Corporation	1	1		
Small Business Administration	32	31	1	
TOTAL	295	205	40	50

Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

economically significant rules by 13 percent. Trump’s count also rose, as shown in Figure 20, albeit with a subset of rules that were deregulatory. Thirty-six of the Trump economically significant rules in 2020 were deemed “Deregulatory” for a “net” of 225, and Biden tops that by 31 percent. (The full list of the 295 economically significant rules in the 2021 Agenda pipeline is available in Appendix: Historical Tables, Part G, which flags the 36 deregulatory and 76 regulatory entries.)

Figure 20 also breaks down economically significant rules into completed, active, and long-term categories. Among the 295 economically significant rules in the fall 2021 edition, 205 stand at the active phase, compared with 173 in 2020, and only 71 in the fall 2017 edition. The new level of active rules exceeds anything seen in the Obama-era Agendas, even taking into account that 20 in the active category were deemed deregulatory in 2020. Barack Obama’s eight-year

Figure 20. 295 Economically Significant Rules in the Unified Agenda Pipeline, 2007–2021



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, various years.

Rules that have a substantial impact in society were not always deemed regulatory by Trump.

average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. Trump’s average across the active category for his four years in office was 120, but that includes deregulatory measures.

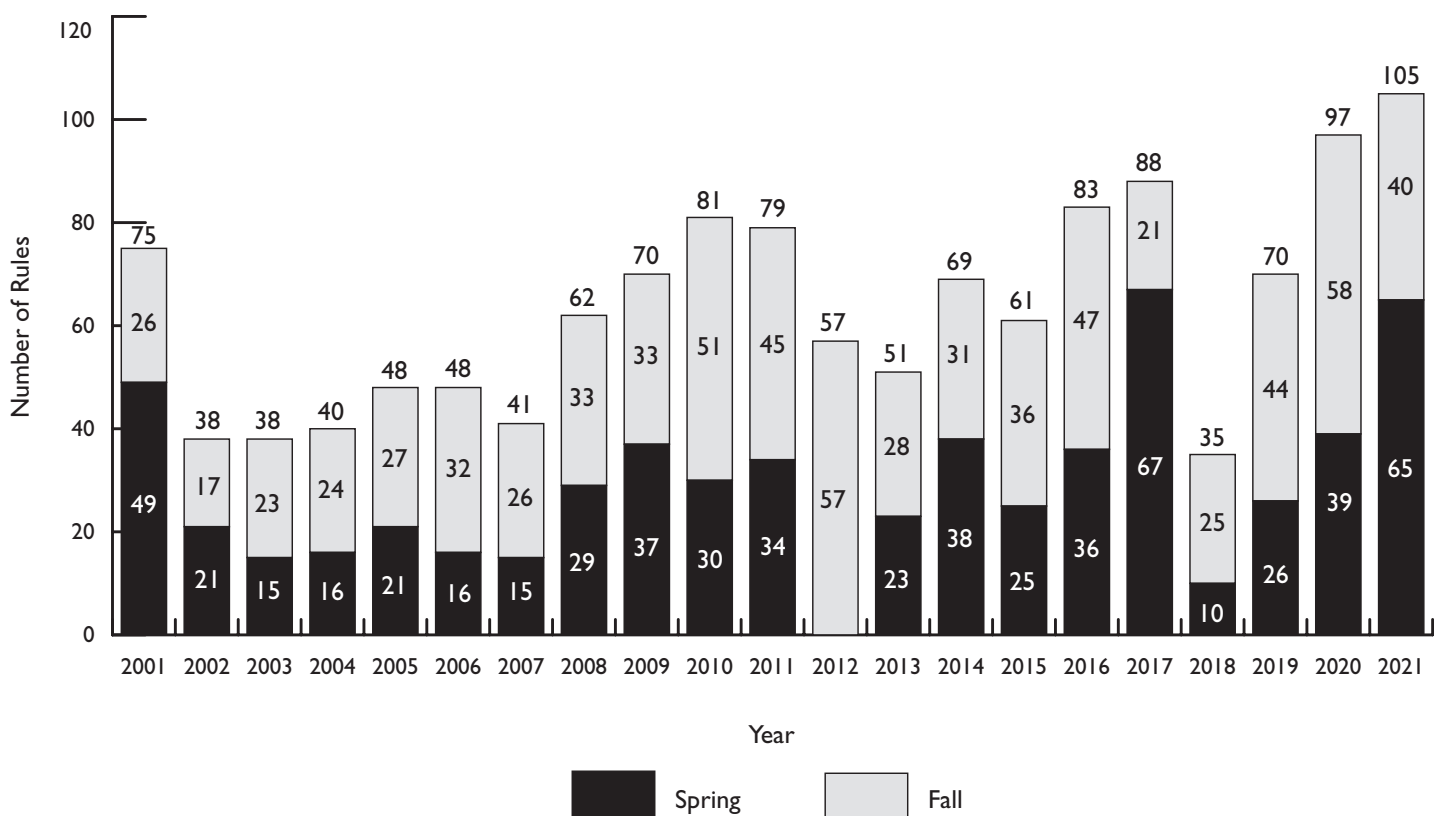
It is important to note that even rules that have a substantial impact in society were not always deemed regulatory by Trump. For example, one of the major policy events in 2020 was the creation of the Paycheck Protection Program (PPP) as part of COVID relief legislation, along with rules for implementing it. Among the 261 economically significant rules in Trump’s fall Agenda, there were 28 Small Business Administration rules at the finalization (not completed) stage related to PPP, but were not designated as either regulatory nor deregulatory.⁴⁷⁶ This has continued under Biden, with 31 SBA rules remaining at that stage. The federal reaction to the COVID-19 crisis is a major variable affecting the flow of rules. Agencies were instructed to use emergency powers, some of which affected federal programs, and not always with deregulatory effect.

As for economically significant rules at the completed stage in the fall Agendas, President Obama’s count was consistently higher than President George W. Bush’s, even when accounting for an Obama election-year drop between 2011 and 2012. Completed rules in the fall Agenda peaked at 57 in 2012, just below the 58 in Trump’s fall Agenda. Completed economically significant rules reached a low of 21 under Trump in 2017. Of the 58 Trump rules completed in the fall 2020 Agenda, 14 are deemed deregulatory. This leaves a net of 44 that, with a few exceptions, still exceeded “historical” levels. Biden’s year one count is 40 (see Figure 19).

These completed rules in Figure 19 represent only those of the fall Agendas. A fuller picture of completed rules in any given year requires incorporating completed rules from the spring Agendas as well. Figure 21 isolates the totals of completed economically significant rules since 1996 from both the spring and fall Agendas.

As Figure 21 shows, completed economically significant rules that had cratered to only

Figure 21. Annual Completed Economically Significant Rules in the Unified Agenda, 2001–2021



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, spring and fall editions, various years.

35 in the combined fall and spring 2018 Agendas under Trump rose subsequently and peaked at 97 in 2020. Completed rules, however, are where the deregulatory counts really mattered for the one-in, two-out directive. In both 2017 and 2020, Trump issued more completed economically significant rules than either Bush or Obama, but that may be partly due to the Administrative Procedure Act’s requirement for the issuing of a new rule to get rid of an old one. When agencies eliminated two for one, it could appear as if more “rules” are being issued. The deregulatory counts for Executive Order 13771 purposes were 16 in 2018, 18 in 2019, and 21 in 2020, which were large proportions of Trump’s totals. If one were to subtract the deregulatory rules from Trump’s tallies, a substantial numerical rollback in economically significant rulemaking was evident compared with his predecessors’ output.

Under the Biden administration, there were a combined 105 completed economically significant rules reported in the spring and fall Unified Agendas, as Figure 21 shows. Biden’s total number of completed economically significant rules exceeds all other years depicted, going back to President Clinton in 1999. Biden’s tally is 8 percent higher than Trump’s last-year gross count of 97. If the 21 deregulatory rules Trump issued are netted out, Biden’s count is 38 percent above Trump’s final-year count. Interestingly Biden’s tally is 84 percent higher than Obama’s tally of 57 completed economically significant rules 10 years ago.

Of course, Trump is not the only president to have issued deregulatory measures in the Unified Agenda, but predecessors never made the reduction agenda so explicit, nor did they ease the tracking of the relevant

Regulatory effects are cumulative and need to be added to previous years' costs.

metrics as the Trump administration did with the Executive Order 13771 “Deregulatory” designations in the OIRA database. The Biden OMB eliminated that designation, so the compilations of deregulatory rules referenced here are no longer possible.

The year 2001 is an exception visible in Figure 21, but the level of completed economically significant rules was notably lower during the late 1990s and early 2000s than today. George W. Bush’s total number of completed economically significant rules during his two terms was 390, for an average of 49 per year. Obama’s total for his eight years was 551, an average of 69 per year. Some agency “midnight regulations” from the prior administration may be reflected in the totals for any first-year president, but this report primarily focuses on calendar-year comparisons. Trump’s four-year average was 72 (given his total of 289), but again, OMB deemed over 50 of these rules as deregulatory.

As noted, of the 3,777 rules in the Agenda, each of the 295 deemed economically significant is estimated to have annual impacts of at least \$100 million. Those rules might be expected to eventually have annual effects of at least \$29 billion (loosely, 295 rules multiplied by the \$100 million economically significant threshold), particularly with the Trump offsets now out of the picture. Whatever the actual and largely indeterminate costs, regulatory effects are cumulative and need to be added to previous years’ costs.

Attention to economically significant rules should not distract policy makers and analysts from the remaining bulk of rules in the annual pipeline, which can have significant costs of their own. In the fall 2021 pipeline, 3,482 federal rules were not designated as economically significant (3,777 total rules minus the 295 economically significant ones). However, a rule estimated to cost below the \$100 million economically significant threshold can still impose substantial costs on the regulated entities. Agencies do not limit their regulatory actions to what

they list in the Agenda. To this we must add the regulatory effects of budget and transfer rules, especially since the pandemic, and guidance documents with regulatory impact.

Notable Regulations by Agency

Many regulatory goals are worthy and needed, but that does not mean the federal administrative bureaucracy offers the best means of achieving them, compared with state and local oversight, along with insurance, liability, and other private sector options. With that caveat in mind, let us look at a section of agency pursuits. In recent Unified Agenda editions and in other venues, federal agencies have noted the regulatory initiatives listed below, among others pending or recently completed. As noted, the full list of the 295 economically significant rules in the fall 2021 Agenda pipeline appears in Appendix: Historical Tables, Part G.

Department of Agriculture

- Rural Broadband Grant, Loan, and Loan Guarantee Program; Rural e-Connectivity Program (ReConnect Program)
- Establishment of a domestic hemp production program
- Revision of the nutrition facts panels for meat and poultry products and updating certain reference amounts customarily consumed
- Supplemental Nutrition Assistance Program: procedural requirements for households that have zero gross countable income and include a work registrant
- Coronavirus Food Assistance Program
- Conservation Stewardship Program
- National Bioengineered Food Disclosure Standard
- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all foods sold in schools and certification of compliance with meal requirements for

the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)⁴⁷⁷

- Standards for grades of canned baked beans⁴⁷⁸
- Rural Energy for America Program
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Modernization of poultry slaughter inspection

Department of Commerce

- Taking and importing marine mammals: taking marine mammals incidental to geophysical surveys related to oil and gas activities in the Gulf of Mexico
- Setting and adjusting patent fees during FY 2020
- Right-whale ship strike reduction

Department of Education

- Gainful employment rule to prepare students for employment in a recognized occupation
- Proposed priorities, requirements, definitions, and selection criteria: Striving Readers Comprehensive Literacy Program
- Income-driven “pay as you earn” program
- Race to the Top

Department of Energy

- Energy efficiency and conservation standards for the following: ceiling fans; manufactured housing; automatic commercial ice makers; wine chillers; battery chargers and power supplies; televisions; residential dehumidifiers; computer servers and computers; walk-in coolers and freezers; residential furnace fans, boilers, central air conditioners, heat pumps, dishwashers, conventional cook-

ing products, and non-weatherized gas furnaces; mobile home furnaces and gas furnaces; electric distribution transformers; commercial refrigeration units, heat pumps, and water-heating equipment; clothes washers and dryers; room air conditioners; portable air conditioners; pool heaters and direct heating equipment; fluorescent and incandescent lamps; metal halide lamp fixtures; small electric motors; and refrigerated bottled or canned beverage vending machines

- Proposed rule on Executive Order 13920, “Securing the United States Bulk-Power System”
- Fossil fuel-generated energy consumption reduction for new federal buildings and major renovations of federal buildings
- Incentive program for manufacturing advanced technology vehicles

Department of Health and Human Services

- Salt: Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Guidance for Industry
- Criteria for an expedited coverage pathway to provide Medicare beneficiaries with faster access to innovative and beneficial technologies⁴⁷⁹
- Medical product “intended use” regulations describing the types of evidence relevant to determining whether a product is intended for use as a drug or device⁴⁸⁰
- Clinical Laboratory Improvement Amendments and Patient Protection and Affordable Care Act; additional policy and regulatory revisions in response to the COVID-19 public health emergency
- COVID-19 hoarding prevention under the Defense Production Act
- Nutrient content claims, definition of the term “healthy”
- Frozen cherry pie: proposed revocation of a standard of identity and a standard of quality⁴⁸¹

- Tobacco product standard for characterizing flavors in cigars
- Requirements for additional traceability records for certain foods
- General and plastic surgery devices: restricted sale, distribution, and use of sunlamp products
- Prohibition of sale of tobacco products to persons younger than 21 years of age
- Medicaid programs reducing provider and patient burden, and promoting patients' electronic access to health information
- Hospice wage index, payment rate update, and quality reporting requirements
- Revisions to payment policies under the Physician Fee Schedule and other revisions to Medicare Part B
- Modernizing and clarifying physician self-referral regulations
- Hospital inpatient prospective payment systems for acute care hospitals, the Long-Term Care Hospital Prospective Payment System, and FY 2021 rates
- Sunscreen drug products for over-the-counter human use guidance
- Rules deeming electronic cigarettes and components subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, and being subjected to warning labels and sale restrictions⁴⁸²
- Required warnings for cigarette packages and advertisements
- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column labeling; modification of certain reference amounts customarily consumed
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- Rule on safety and effectiveness of consumer antibacterial soaps ("Topical Antimicrobial Drug Products for Over-the-Counter Human Use"),⁴⁸³ consumer antiseptics
- Federal policy for the protection of human subjects
- Criteria for determining whether a drug is considered usually self-administered
- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Produce safety regulation
- Mammography quality standards
- Fire safety and sprinkler requirements for long-term care facilities
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Rule on comprehensive care for joint replacement
- Medication-assisted treatment for opioid use disorders reporting requirements
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; Medicaid, exchanges, and children's health insurance programs: eligibility, appeals, and other provisions
- Revisions to promote patients' electronic access to health care information and improve interoperability for Medicare- and Medicaid-participating providers and suppliers
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies
- Bar code label requirements for human drug products and blood

Department of Homeland Security

- Computer Assisted Passenger Prescreening System, providing government access to passenger reservation information
- "REAL ID": Minimum Standards for Driver's Licenses and Identification Cards

Acceptable by Federal Agencies for Official Purposes; Mobile Driver's Licenses⁴⁸⁴

- Removing H-4 dependent spouses from the classes of aliens eligible for employment authorization
- Affidavit of support on behalf of immigrants
- Collection and use of biometrics by U.S. Citizenship and Immigration Services; and collection of biometric data from aliens upon entry to and exit from the United States
- Western Hemisphere Travel Initiative: noncompliant traveler fee
- Air cargo advance screening
- Visa Security Program fee
- Establishing a fixed time period of admission and an extension of stay procedure for nonimmigrant academic students, exchange visitors, and representatives of foreign information media
- Cost of assistance estimates in the disaster declaration process for the Public Assistance Program
- Emergency Management Priorities and Allocations System
- COVID-19 hoarding prevention under the Defense Production Act
- Passenger screening using advanced body imaging technology
- Importer security filing and additional carrier requirements
- Air cargo screening and inspection of towing vessels

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting smoke-free public housing⁴⁸⁵
- Regulation of Fannie Mae and Freddie Mac on housing goals
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Establishing a more effective fair-market rent system; using small-area fair-market rents in Housing Choice Voucher Program (modification of income and rent

determinations in public and assisted housing)

Department of the Interior

- Revised requirements for well plugging and platform decommissioning
- Revisions to the requirements for exploratory drilling on the Arctic Outer Continental Shelf
- Endangered and threatened wildlife and plants: removal of the gray wolf from the List of Endangered and Threatened Wildlife
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic Outer Continental Shelf⁴⁸⁶
- Blowout prevention for offshore oil and gas operations

Department of Justice

- Nondiscrimination on the basis of disability: accessibility of Web information and services of state and local governments
- Regulation of telepharmacy practice⁴⁸⁷
- National standards to prevent, detect, and respond to prison rape
- Retail sales of scheduled listed chemical products

Department of Labor

- Conflict-of-interest rule in financial investment advice
- Financial factors in selecting plan investments
- Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings⁴⁸⁸
- Tip regulations under the Fair Labor Standards Act
- Independent contractor status under the Fair Labor Standards Act
- Overtime rule: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees"⁴⁸⁹
- Establishing a minimum wage for contractors (Executive Order 13658)

- Establishing paid sick leave for businesses that contract with the federal government (in response to Executive Order 13706)⁴⁹⁰
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)⁴⁹¹
- Hearing conservation program for construction workers
- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Reinforced concrete in construction
- Preventing back-over injuries and fatalities
- Cranes and derricks
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Application of the Fair Labor Standards Act to domestic service
- Occupational exposure to styrene crystalline silica, tuberculosis, and beryllium⁴⁹²
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Health care standards for mothers and newborns
- Process safety management and prevention of major chemical accidents
- Federal Aviation Administration rule on operation and certification of drones and near critical infrastructure facilities⁴⁹⁵ (discretionary waivers⁴⁹⁶)
- Flight attendant work hour limitations and rest period requirements⁴⁹⁷
- National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standard 150: vehicle-to-vehicle communication
- Rear seat belt reminder system
- Retroreflective tape and underride guards for single-unit trucks
- Medium and heavy-duty fuel efficiency standards
- Establish side-impact performance requirements for child restraint systems
- Corporate Average Fuel Economy standard civil penalties
- Safer Affordable Fuel-Efficient Vehicles Rules for passenger cars and light trucks
- High-Speed Intercity Passenger Rail Program; Buy America program requirements
- Federal Motor Carrier Safety Administration and National Highway Traffic Safety Administration rule on speed limiters and electronic stability control systems for heavy vehicles⁴⁹⁸
- Federal Railroad Administration's Train crew staffing rule seeking a two-engineers-on-a-train mandate⁴⁹⁹
- NHTSA rule on lighting and marking on agricultural equipment⁵⁰⁰
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple-trailer combination trucks⁵⁰¹
- Requirement for installation of seat belts on motor coaches; rear center lap and shoulder belt requirement; seat belt reminder system
- Carrier safety fitness determination
- Standard for rearview mirrors
- Commercial driver's license drug and alcohol clearing house
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection

Department of Transportation

- Quiet car rule; minimum sound requirements for hybrid and electric vehicles⁴⁹³
- Electronic logging device revisions; unique electronic identification of commercial motor vehicles (hours of service, rest, and sleep for truck drivers)
- Refunding fees for delayed checked bags and ancillary services that are not provided⁴⁹⁴

- Federal Railroad Administration passenger equipment safety standards amendments
- Rear-impact guards and others safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Registration and training for operators of propane tank-filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries
- The Pipeline and Hazardous Materials Safety Administration rule on safety of onshore gas gathering pipelines⁵⁰²
- Regulatory capital rule: Paycheck Protection Program lending facility and Paycheck Protection Program loans
- Financial Crimes Enforcement Network: cross-border electronic transmittals of funds
- Assessment of fees for large bank-holding companies and other financial entities supervised by the Federal Reserve to fund the Financial Research Fund (which includes the Financial Stability Oversight Council)
- Troubled Asset Relief Program standards for compensation and corporate governance

Architectural and Transportation Barriers Compliance Board

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- New grape variety names approved for American wines⁵⁰³
- Small Business Administration Business Loan Program temporary changes; Paycheck Protection Program—additional criteria for seasonal employers
- Business Loan Program temporary changes; Paycheck Protection Program Requirements—loan forgiveness
- Provisions pertaining to certain transactions by foreign persons involving real estate in the United States
- Provisions pertaining to certain investments in the United States by foreign persons
- Anti-money laundering program and suspicious activity report filing requirements for investment advisers
- Prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds
- Margin and capital requirements for covered swap entities
- Regulatory capital rule: temporary exclusion of U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio

- Americans with Disabilities Act accessibility guidelines for passenger vessels
- Information and communication technology standards and guidelines

Consumer Financial Protection Bureau

- Proposed rule regulating business practices on payday and vehicle title loans⁵⁰⁴

Consumer Product Safety Commission

- Regulatory options for table saws
- Flammability standards for upholstered furniture and bedclothes
- Testing, certification, and labeling of certain consumer products
- Banning of certain backyard play sets
- Product registration cards for products intended for children
- Safety standard for children's folding chairs and stools

Environmental Protection Agency

- National primary drinking water regulations for lead and copper: regulatory revisions

- Control of air pollution from new motor vehicles: heavy-duty engine standards: Cleaner Trucks Initiative
- National emission standards for hazardous air pollutants for major sources: industrial, commercial, and institutional boilers and process heaters: amendments
- Review of dust-lead post-abatement clearance levels
- Reclassification of major sources as area sources under Section 112 of the Clean Air Act
- Oil and natural gas sector: emission standards for new, reconstructed, and modified sources reconsideration
- Greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles
- Performance standards for new residential wood heaters
- Model trading rules for greenhouse gas emissions from electric utility generating plants constructed before January 7, 2014
- Financial responsibility requirements under Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) for classes of facilities in the hard-rock mining industry
- Clean air visibility, mercury, and ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category
- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- National emission standards for hazardous air pollutants from certain reciprocating internal combustion engines and auto paints
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Trichloroethylene; rulemaking under Toxic Substances Control Act Section 6(a); vapor degreasing
- Reassessment of use authorizations for polychlorinated biphenyls (PCBs) in small capacitors in fluorescent light ballasts in schools and day care centers
- Rulemakings regarding lead-based paint and the Lead Renovation, Repair, and Painting Program for public and commercial buildings
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- Control of emissions from non-road spark-ignition engines, new locomotives, and new marine diesel engines

Federal Communications Commission

- Protecting the privacy of customers of broadband and other telecommunications services⁵⁰⁵
- Allocation of Spectrum for Non-Federal Commercial Space Launch Operations⁵⁰⁶
- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions
- Processing applications in the direct broadcast satellite (DBS) service; feasibility of reduced orbital spacing for provision of DBS service in the United States
- Restoring Internet freedom; protecting and promoting the open Internet
- Broadband for passengers aboard aircraft
- Broadband over power line systems
- Satellite broadcasting signal carriage requirements
- Robocall mitigation strategies⁵⁰⁷

Federal Acquisition Regulation

- Prohibition on contracting with entities using certain telecommunications and video surveillance services or equipment

Federal Deposit Insurance Corporation

- Standardized approach for risk-weighted assets
- Margin and capital requirements for covered swap entities

Federal Energy Regulatory Commission

- Critical infrastructure protection reliability standards

Federal Permit Improvement Steering Council

- Adding land revitalization as a sector of projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act

Federal Reserve System

- Exception of certain loans made (Executive Officers, Directors, and Principal Shareholders of Member Banks) through June 30, 2020, that are guaranteed under the Small Business Administration's Paycheck Protection Program from the requirements of the Federal Reserve Act and the associated provisions of the Board's Regulation O⁵⁰⁸

National Transportation Safety Board

- Commercial space tourism regulations⁵⁰⁹

Office of Personnel Management

- Multistate exchanges: implementations for Affordable Care Act provisions
- Paid parental leave and miscellaneous provisions of the Family and Medical Leave Act

Surface Transportation Board

- Reciprocal switching in rail service⁵¹⁰

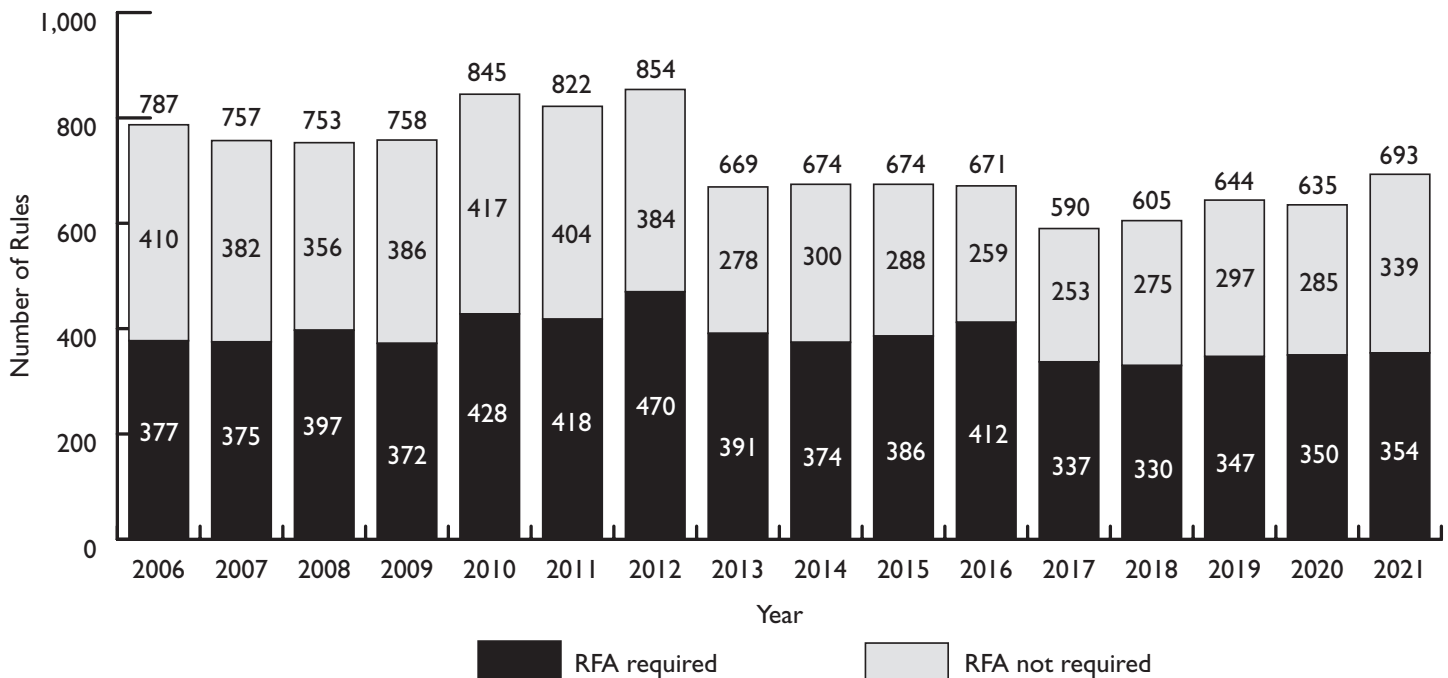
Federal Regulations Affecting Small Business

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules' effects on small businesses.⁵¹¹ Figure 22 depicts the number of rules requiring such annual regulatory flexibility analysis. It also portrays other rules anticipated by agencies to affect small businesses, but do not require a regulatory flexibility analysis. The number of rules acknowledged to significantly affect small business dropped substantially after 2012 during the Obama administration, likely in part reflecting reporting changes noted, but they dropped even more substantially under Trump, amplified by some rules comprising rollbacks. Under Biden, the count is approaching 700 again, but without a deregulatory designation affecting the count.

As Figure 22 shows, at the end of 2021, the total number of rules affecting small business stood at 693, of which 354 required RFA analysis and another 339 that agencies deemed to affect small business but not require RFA analysis.⁵¹² This represents a 9 percent increase over Trump in 2020, when there had been 635 rules affecting small business, of which 83 were deemed "Deregulatory." (Earlier deregulatory counts for small business rules under Trump were 102 in both 2019 and 2018, and 83 in 2017). If Trump's deregulatory rules for small business in 2020 are netted out, Biden's increase in rules affecting small business in 2021 is 25 percent.

For comparison, there had been 671 rules affecting small business in Obama's final year. The number of rules with small-business impacts during the Obama administration at times exceeded 800, a level not seen since 2003. The average number of rules affecting small business during Obama's eight years, 406, exceeded George W. Bush's eight-year average of 377. Trump's average annual number of

Figure 22. Rules in the Pipeline Affecting Small Business, 2006–2021



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, various years.

State and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform.

rules affecting small business was lower than either Bush or Obama, at 341, dozens of which were also deemed deregulatory each year.

Table 8 breaks out the 2021 fall Unified Agenda’s 693 rules affecting small business by department, agency, and commission. The top five—the Departments of Health and Human Services, Commerce, and the Treasury, along with the Federal Communications Commission and the multiagency Federal Acquisition Regulations—accounted for 316, or 46 percent, of the 693 rules affecting small business.

The overall proportion of total rules affecting small business stands at 18 percent, but varies widely among agencies (see Table 9). (For the numbers of rules affecting small business broken down by department and agency for fall Agenda editions since 1996, see Appendix: Historical Tables, Part H.)

Box 4 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business, stacking as these firms grow.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily emphasizes regulations imposed on the private sector. However, state and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to require the Congressional Budget Office to produce cost estimates of mandates affecting state, local, and tribal governments above the then-threshold of \$50 million. The pandemic and recent infrastructure legislation that have affected the relationship between the federal and state governments (and individuals) have raised the saliency of federal encroachment on state roles and of the regulatory effects of federal spending on local concerns.

As Figure 23 shows, agencies report that 325 of the 3,777 rules in the fall 2021 Agenda pipeline will affect local governments, an in-

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2021

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	175	15		13	9	3	2	42	24.0%	
Dept. of Commerce	269	28	7	1	20	7	1	64	23.8%	64
Dept. of Defense	219	4		2	34	1	6	47	21.5%	
Dept. of Education	42	1						1	2.4%	
Dept. of Energy	138	5			3			8	5.8%	
Dept. of Health and Human Services	235	29	6	5	30	1	2	73	31.1%	73
Dept. of Homeland Security	160	7	4	4			5	20	12.5%	
Dept. of Housing and Urban Development	51							0	0.0%	
Dept. of the Interior	363	4	1	3	15			23	6.3%	
Dept. of Justice	118				17	1		18	15.3%	
Dept. of Labor	98	8			9		3	20	20.4%	
Dept. of State	70				21	2	1	24	34.3%	
Dept. of Transportation	301	8	1	6	13	1	6	35	11.6%	
Dept. of the Treasury	360	15	1	1	35	1	7	60	16.7%	60
Dept. of Veterans Affairs	85							0	0.0%	
Agency for International Development	16				1			1	6.3%	
Architectural and Transportation Barriers Compliance Board	5							0	0.0%	
CPBSD*	9							0	0.0%	
Commodity Futures Trading Commission	18							0	0.0%	
Consumer Financial Protection Bureau	9	1	1		3	1	2	8	88.9%	
Consumer Product Safety Commission	22	5	4	1				10	45.5%	
Corp. for National and Community Service	11							0	0.0%	
Council of Inspector General on Integrity and Efficiency	1									
Council on Environmental Quality	5							0	0.0%	
Court Services/Offender Supervision, D.C.	7							0	0.0%	
Environmental Protection Agency	226	3			6	1	3	13	5.8%	
Federal Acquisition Regulation	58	39	7	4	5		1	56	96.6%	56
Farm Credit Administration	14							0	0.0%	
Federal Communications Commission	87		1	60			2	63	72.4%	63

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Federal Deposit Insurance Corporation	29				5			5	17.2%	
Federal Energy Regulatory Commission	22							0	0.0%	
Federal Housing Finance Agency	14							0	0.0%	
Federal Maritime Commission	5							0	0.0%	
Federal Mediation and Conciliation Service	5					1		1	20.0%	
Federal Mine Safety and Health Review Commission	2							0	0.0%	
Federal Permitting Improvement Steering Committee	2				1			1	50.0%	
Federal Reserve System	31	1								
Federal Trade Commission	19				15	2		17	89.5%	
General Services Administration	43	14			17	9		40	93.0%	
Institute of Museum and Library Services	1							0	0.0%	
Inter-American Foundation	2							0	0.0%	
National Aeronautics and Space Administration	5							0	0.0%	
National Archives and Records Administration	8							0	0.0%	
National Credit Union Administration	30							0	0.0%	
National Endowment for the Arts	6				1		1	2	33.3%	
National Endowment for the Humanities	7							0	0.0%	
National Indian Gaming Commission	16				2			2	12.5%	
National Labor Relations Board	4	1						1	25.0%	
National Mediation Board	1							0	0.0%	
National Science Foundation	3									
National Transportation Safety Board	7							0	0.0%	
Nuclear Regulatory Commission	61	3	1	1				5	71.4%	
Office of Government Ethics	13							0	0.0%	
Office of Management and Budget	8		1					1	7.7%	
Office of National Drug Control Policy	1							0	0.0%	
Office of Personnel Management	48	1								

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Peace Corps	5									
Pension Benefit Guaranty Corporation	10						0	0.0%		
Postal Regulatory Commission	5						0	0.0%		
Railroad Retirement Board	7						0	0.0%		
Securities and Exchange Commission	74	9	2	3	2		16	21.6%		
Small Business Administration	76	11			1		12	15.8%		
Social Security Administration	22						0	0.0%		
Surface Transportation Board	8			1			1	12.5%		
Tennessee Valley Authority	1					1	1	100.0%		
U.S. Agency for Global Media	3						0	0.0%		
U.S. Commission on Civil Rights	1						0	0.0%		
TOTAL	3,777	212	37	105	265	32	42	693	18.3%	316
		354			339					46% of total

Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” and from online edition at www.reginfo.gov.

RFA = regulatory flexibility analysis; L-T = long term.

* Committee for Purchase from People Who Are Blind or Severely Disabled.

crease of 26 percent over Trump’s last year count of 258. That includes all stages—active, completed, and long-term.⁵¹³ In Trump’s fall 2020 Agenda, 46 of 258 local actions had been deemed deregulatory for Executive Order 13771 purposes across the active, completed, and long-term categories, which brings Biden’s to 53 percent over Trump’s “net” 212 local rules. Since the passage of the Unfunded Mandates Act, the number of rules affecting local governments is down 39 percent.

Turning to the total number of regulatory actions affecting state governments, we find 514, also a 26 percent increase over Trump’s 409 state actions a year earlier, of which 72 were deemed deregulatory for Executive Order 13771 purposes, across the active, completed, and long-term categories.

Unfunded federal mandates on state and local governments could influence regulatory reform measures. At the 2016 Legisla-

tive Summit of the National Conference of State Legislatures (NCSL) in Chicago, the NCSL Standing Committee on Budgets and Revenue issued a resolution on unfunded mandates asserting: “The growth of federal mandates and other costs that the federal government imposes on states and localities is one of the most serious fiscal issues confronting state and local government officials.”⁵¹⁴ The NCSL called for “reassessing” and “broadening” the 1995 Unfunded Mandates Reform Act. Likewise, several state attorneys general in 2016 wrote to House and Senate leadership over federal agencies’ “failing to fully consider the effect of their regulations on States and state law,” and called for strengthening the Administrative Procedure Act.⁵¹⁵

The Congressional Budget Office reports that since 2006, 190 laws have imposed intergovernmental mandates on states and localities, with 420 mandates within these laws.⁵¹⁶ Regulatory mandates can derive

Box 4. Federal Workplace Regulations Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking, or financial firms.

I EMPLOYEE

- Fair Labor Standards Act (overtime and minimum wage)
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act
- Military Selective Service Act (allowing 90 days' leave for reservists, rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility that must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

4 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

15 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)

- Americans with Disabilities Act (no discrimination, reasonable accommodations)

20 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers to be commensurate with younger workers)
- Consolidated Omnibus Budget Reconciliation Act (continuation of medical benefits for up to 18 months upon termination)

25 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Health Maintenance Organization (HMO) Act (HMO option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

50 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks of unpaid leave or care for newborn or ill family member)

100 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Worker Adjustment and Retraining Notification Act (60-day written notice of plant closing)—Civil Rights Act (annual EEO-1 form)

from such laws, as well as from agencies acting unilaterally. According to official data, few have imposed costs on states and localities exceeding the noted statutory threshold (aggregate direct costs during any of the mandate's first five years of \$50 million in 1996; \$77 million now).

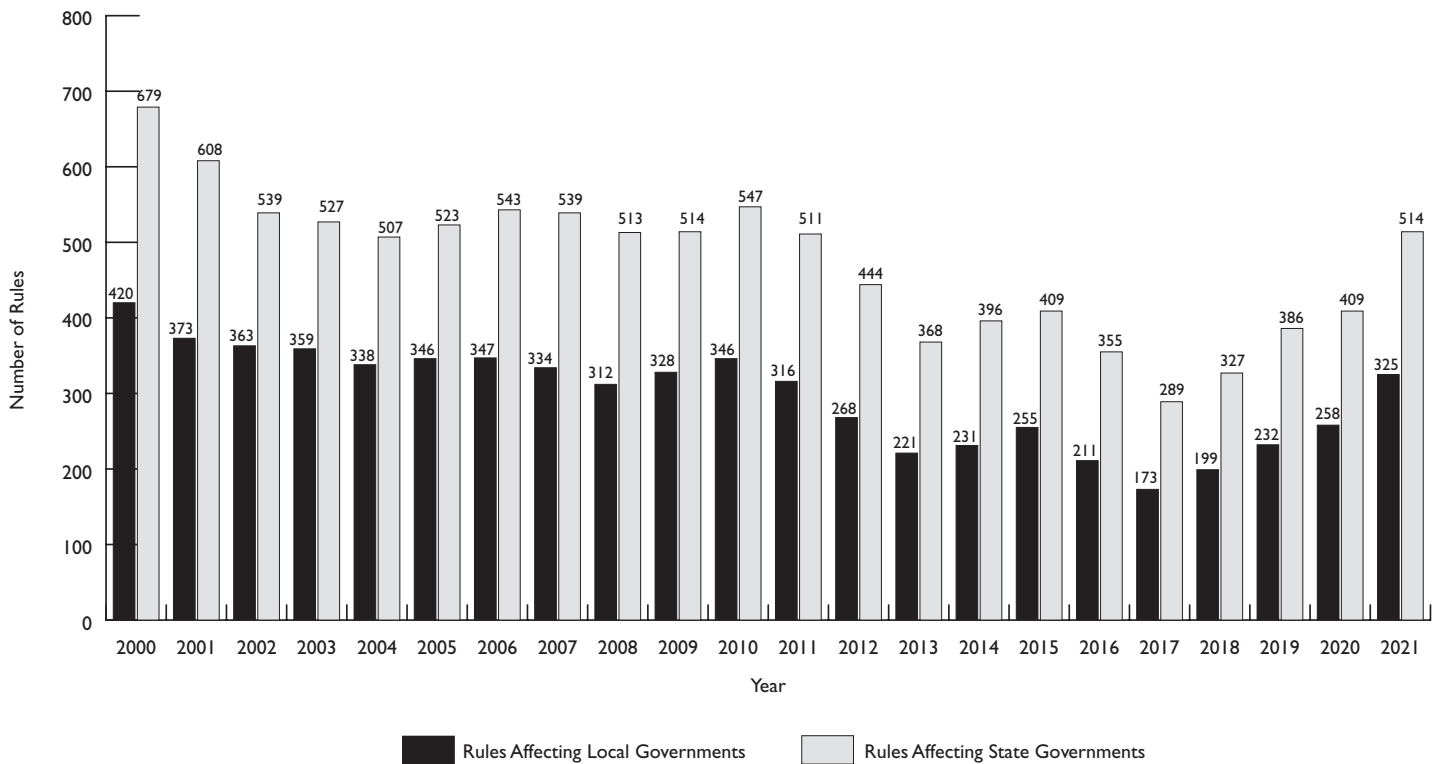
Agencies claim that very few of the rules affecting states and localities impose unfunded mandates on them, but that may be because the Unfunded Mandates Reform Act is not applicable to many rules and programs.⁵¹⁷ Nonetheless, the following are

some notable completed or pending regulations over the past decade that federal agencies have acknowledged in the Unified Agenda as unfunded mandates (with their Regulation Identifier Number provided).⁵¹⁸

Department of Agriculture

- USDA/FNS: National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010 (0584-AE09)

Figure 23. Rules Affecting State and Local Governments, 2000–2021



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.

- USDA/RBS: Debt Settlement—Community and Business Programs (0570-AA88)

Department of Health and Human Services

- HHS/FDA: Revising the National Drug Code Format and Drug Labeling Barcode Requirements (0910-AI52)
- HHS/FDA: Combinations of Bronchodilators with Expectorants; Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drug Products for Over-the-Counter Human Use (0910-AH16)
- HHS/CMS: CY 2016 Notice of Benefit and Payment Parameters (CMS-9944-P) (0938-AS19)
- HHS/FDA: Over-the-Counter Drug Review—Internal Analgesic Products (0910-AF36)

- HHS/CDC: Establishment of Minimum Standards for Birth Certificates (0920-AA46)
- HHS/FDA: Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents (0910-AG33)

Department of Justice

- DOJ/LA: Supplemental Guidelines for Sex Offender Registration and Notification (1105-AB36)
- DOJ/CRT: Nondiscrimination on the Basis of Disability in State and Local Government Services (1190-AA46)

Department of Labor

- DOL/OSHA: COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking (1218-AD42)

- DOL/OSHA: Occupational Exposure to Crystalline Silica (1218-AB70)

Department of Transportation

- DOT/PHMSA: Hazardous Materials: Real-Time Emergency Response Information by Rail (2137-AF21)
- DOT/FHWA: Real-Time System Management Information Program (2125-AF19)

Architectural and Transportation Barriers Compliance Board

- ATBCB: Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles (3014-AA38)

Environmental Protection Agency

- EPA/OW: National Primary Drinking Water Regulations (2040-AA94, 2040-AF15)
- EPA/OCSPP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Day Cares (2070-AK12)
- EPA/WATER: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (2040-AF14)
- EPA/SWER: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (2050-AG46)
- EPA/SWER: Standards for the Management of Coal Combustion Re-

siduals Generated by Commercial Electric Power Producers (Coal Ash) (2050-AE81)

- EPA/AR: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (2060-AQ86)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Reconsideration (2060-AR13)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (2060-AP52)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants (NESHAP) from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units—Appropriate and Necessary Finding (2060-AR31)
- EPA/AR: NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44)
- EPA/AR: NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25)
- EPA/AR: NESHAP: Portland Cement Notice of Reconsideration and New Source Performance Standards for Portland Cement (2060-AO15)

Nuclear Regulatory Commission

- NRC: Revision of Fee Schedules (3150-AI93)

Government Accountability Office Database on Regulations

The various federal reports and databases on regulations serve different purposes:

- The *Federal Register* shows the aggregate number of proposed and final rules—both those that affect the private sector and those that deal with internal government procedures or programs—and numerous notices and presidential documents.
- The Unified Agenda depicts agency regulatory priorities and provides detail about the number of rules at various stages in the regulatory pipeline, rules with economically significant effects, and rules affecting small businesses and state and local governments.

The 1996 Congressional Review Act (CRA) requires agencies to submit rules to both houses of Congress and to the Government Accountability Office, and for the GAO to submit reports to Congress on the major ones—those with annual estimated costs of \$100 million or more. Owing to such reports, which are prepared and maintained in a GAO database, one can more readily observe (a) which of the thousands of final rules that agencies issue each year are major (to the extent the directive is obeyed) and (b) which departments and agencies are producing the major rules.⁵¹⁹ However, according to recent analysis, some final rules are not being properly submitted to the GAO and to Congress as required under the CRA.⁵²⁰ Major guidance documents are rarely submitted.

The CRA gives Congress a window of 60 legislative days in which to review a received major rule and pass a resolution of disap-

proval rejecting the rule. Despite the issuance of thousands of rules since the CRA's passage, including dozens of major rules, before 2017 only one had been rejected: the Department of Labor's rule on workplace repetitive-motion injuries in early 2001. The 115th Congress, which began in January 2017, used the CRA 16 times to overturn regulations. The 117th Congress, which began in 2022, used the CRA to overturn three Trump-era rules: an Equal Employment Opportunity Commission rule on conciliation procedures, an EPA rule on oil and natural gas sector source emission standards, and an Office of the Comptroller of the Currency rule on lending by national banks and savings associations.

For all rules, the database appears to contain 84,893 rules through December 31, 2021.⁵²¹ As noted, there have been 95,848 rules since the CRA's passage through 2021. The database contains 1,704 reports on major rules overall.⁵²² Major rules can add burdens, reduce them, delay their implementation, or set rates and standards for major government programs like Medicaid.

Table 9 depicts the number of final major rule reports issued by the GAO regarding agency rules from 1998 through calendar year 2021.⁵²³ With the caveat that there is fluctuation in the GAO database from year to year, 98 major rules were reported in 2021, a significant drop from 140 in 2020,⁵²⁴ which is the highest count apart from 2016 under Obama since the GAO began these tabulations following passage of the CRA. In any event, the GAO counts are presented for context and completeness, despite their fluctuation. Suffice it to say that

*Reporting on
all aspects of
rulemaking can
improve.*

Table 9. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 2002–2021

	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
Department of Agriculture	6	3	8	5	2	5	7	8	4	2	4	6	12	3	7	8	6	7	4	7
Department of Commerce		2		1	1				2				2	1	2			1		
Department of Defense	1	2	1		1	2	2	1				4	4	6			1			2
Department of Education	3	1	6		3	2	1	2	5	4	2	5	6	2	1	2				
Department of Energy		4		2	4	8	2	6	3	1	5	4	7	3	3				1	1
Department of Health and Human Services	17	11	22	19	16	38	18	27	24	23	24	24	17	24	19	16	22	22	17	13
Department of Homeland Security	5	5	2	2		5	3	2	2	1	1	3	1	5	4	2	3	2	2	
Department of Housing and Urban Development					1	2	1				2	1	1	2			1	1		
Department of Justice			4	2		1				1	1	3				1	1	1		3
Department of Labor	8	1		1	2	8	1	3	3	3	2	6	1	2	3	3	1	1		2
Department of the Interior	2	4	2	5	3	6	6	6	6	7	6	7	7	10	5	6	6	8	7	7
Department of State	1			1						1		1		1						
Department of Transportation	4	3	1	1		4	3	3	3	2	2	5	6	8	3	1	3	5	4	6
Department of the Treasury	11	16	13		2	5	7	6	3	2	1	4		1	1	1		1	1	
Department of Veterans Affairs	2	1	3	3	1	1	4	3	1	1	2	2	2		1		1		2	1
Architectural Barriers Compliance Board					1													1		
Commodity Futures Trading Commission						4		1	4	9	6									
Consumer Financial Protection Bureau					3	2	2		4	1	1									
Consumer Product Safety Commission	4										1					1				
Emergency Oil and Gas Loan Board																				
Emergency Steel Guarantee Loan Board																				
Environmental Protection Agency	3			1	2	7	8	2	3	5	6	8	3	9	2	8	3	7	3	1
Equal Employment Opportunity Commission											1									

Table 10. Number of Significant and Major Rules

		Completed Economically Significant*	Major per GAO**	Major Per Unified Agenda***	Significant****
2016	Obama	83	105	96	486
2017	Trump	88	71	102	222
2018	Trump	35	54	43	201
2019	Trump	70	78	84	261
2020	Trump	97	140	133	462
2021	Biden	105	98	124	387

* From Unified Agenda by (loosely) “fiscal” year; see Figure 20’s completed economically significant rules.

** From GAO database by calendar year.

*** From Unified Agenda.

**** From Federal Register.gov advanced search of “significant” final rules; these may be found at www.tenthousandcommandments.com. These fluctuate in the database periodically.

there are several dozen GAO “reports” on major rules each year, and reporting on all aspects of rulemaking can improve.

There are several categories of significant rules. A bewildering nomenclature places regulations into categories encompassing such terms as rules, significant rules, major rules, economically significant rules, guidance, and more.⁵²⁵ For example, an economically significant rule is major, but a major rule is not necessarily economically significant, so there are fewer economically significant rules than major ones. Both economically significant and major rules qualify as significant. Table 10 depicts numbers of each over the past six years as follows (counts fluctuate slightly as discussed; these are captured in various years editions of this report):

Note that some economically significant rule counts are larger than the GAO’s count of major or significant rules in some instances. There may be different explanations, such as follows:

- Calendar and fiscal years do not align
- Rules are not being reported to the GAO but are being noted at OMB

- Independent agency rules appear under different categorizations in various databases
- Budget and transfer rules are reported differently

Legislation or an executive order to systematize nomenclature could help bring greater clarity, reconcile record keeping across various government databases, and subject independent agencies to greater oversight by Congress and the public.⁵²⁶

Regarding Table 9’s GAO-based compilation, President Barack Obama issued 691 major rules, compared with President George W. Bush’s 504—both over eight years. (This presentation uses calendar years, so Bush’s eight years contain the final weeks of President Bill Clinton’s presidency, before Bush’s inauguration, and Obama’s first year includes the Bush administration’s final weeks.) President Bush averaged 63 major rules annually during his eight years in office. President Obama averaged 86, a 36 percent higher average annual output than that of Bush. Trump issued an average of almost 69 major rules annually—49 in 2017, 55 in 2018, 80 in 2019, and 90 in 2020—some of which were deregulatory.

Liberate to Stimulate

Policy makers frequently propose spending stimulus to grow or strengthen economies. That has certainly been the case during the past two years in response to COVID-19. A regulatory liberalization stimulus is the alternative to offer confidence and certainty to businesses and entrepreneurs. Businesses may sometimes value what they regard as a semblance of stability over the streamlining of rules.⁵²⁷ With respect to the transition from Trump to Biden, *Fortune's* Geoff Colvin asked, “Why do so many CEOs welcome the seemingly hostile Biden’s victory?”:

The big, general reason many business leaders are fine with a President Biden is that they can’t take the tumult any longer. Business prizes stability, predictability, certainty. Trump’s incessant whipsawing on some of the largest issues—imposing tariffs, closing borders, retaliating against companies, leaving NATO—has exhausted businesspeople. As many of them say privately, they can compete so long as they know the rules, but can’t if the rules are constantly changing.⁵²⁸

While there is value in stability, it can be compatible with regulatory streamlining, which can enhance it. Some future executive branch could take further steps beyond what Trump did on streamlining, leaning from what worked and what did not, such as requiring guidance to be submitted to Congress and to the GAO as required by the CRA. Such reform-oriented executive orders could include:

- Required review of independent agency rules

- Principles for guidance document preparation and disclosure
- Required preparation of the annual aggregate regulatory cost estimate already required by law but ignored
- Establishment of an “Office of No” chartered such that its role is purely to make the case against new and existing regulations.⁵²⁹

Improving Regulatory Disclosure

Certainly, some regulations’ benefits exceed costs under the parameters of guidance to agencies, such as OMB Circular A-4, but for the most part net benefits or actual costs are not quantified.⁵³⁰ Without more thorough regulatory accounting than we get today—backed up by congressional certification of the specific interventionist actions agencies take—it is difficult to know whether society wins or loses as a result of rules.⁵³¹ Relevant regulatory data should be compiled, summarized, and made easily available to the public. One important step toward better disclosure would be for Congress to require—or for the administration or OMB to initiate—publication of a summary of available but scattered data. Such a regulatory transparency report card could resemble some of the presentation in *Ten Thousand Commandments*.

Disclosure can enable accountability. Congress routinely delegates legislative power to unelected agency personnel. Reining in off-budget regulatory costs can occur only when elected representatives are held responsible and end “regulation without representation.” Stringent limitations on delegation, such as

A regulatory liberalization stimulus is the alternative to offer confidence and certainty to businesses and entrepreneurs.

Table 11. A Possible Breakdown of Economically Significant Rules

Category	Breakdown
1	> \$100 million < \$500 million
2	> \$500 million < \$1 billion
3	> \$1 billion < \$5 billion
4	> \$5 billion < \$10 billion
5	> \$10 billion

requiring congressional approval of rules, are essential.

As detailed earlier, regulations fall into two broad classes: (a) those that are economically significant or major (with effects exceeding \$100 million annually) and (b) those that are not. Agencies tend to emphasize reporting of economically significant or major rules, which OMB also highlights in its reports to Congress on regulatory costs and benefits. A problem with this approach is that many rules that technically come in below the threshold can still be very significant in real-world terms.

Under current policy, agencies need not specify whether any or all of their economically significant or major rules cost just above the \$100 million threshold or far above it. One helpful reform would be for Congress to require agencies to break up their cost categories into tiers, for example, as depicted in Table 11. Agencies could classify their rules on the basis of either cost information that has been provided in the regulatory impact analyses that accompany some economically significant rules or separately performed internal or external estimates.

Abundant information about costs and burdens of regulation is available but scattered and difficult to compile or interpret. Online databases and sites like Regulations.gov now make it easier than it was back when interested citizens would need to comb through the Unified Agenda’s 1,000-plus pages of small, multicolumn print to learn about regulatory trends and acquire information on rules. Today it is easier to compile results

from online searches and agencies’ regulatory plans, but more can be done. Material from the Unified Agenda could be made still more accessible, relevant, and user-friendly if elements of it were officially summarized in charts and presented as a section in the federal budget, in the Agenda itself, or in the *Economic Report of the President*. Suggested components of this Regulatory Transparency Report Card appear in Box 6.⁵³²

In addition to revealing burdens, impacts, and trends, such a breakdown would reveal more clearly what we do *not* know about the regulatory state—such as, for example, the percentage of rules for which their issuing agencies failed to quantify either their costs or benefits. Observers lost what little ability existed to distinguish between rules that are additive and subtractive with regard to burdens upon the ejection of Executive Order 13771’s deregulatory designation and the fiscal year-end “Regulatory Reform Results” reports no longer available on OMB’s site. Similarly, future regulatory reforms should require regulatory and deregulatory actions to be classified separately in the *Federal Register* and for agencies’ confusing array of rule classifications to be harmonized.⁵³³

The accumulation of regulatory guidance documents, memoranda, and other regulatory dark matter to implement or influence policy calls for greater disclosure than exists now, since these kinds of agency issuances can be regulatory in effect but are generally nowhere to be found in the Unified Agenda or Regulatory Plan. Inventorying such decrees is difficult, but formal attempts began in 2020 in response to Executive Order

Box 6. Regulatory Transparency Report Card, Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

- Tallies of “economically significant” rules and minor rules by department, agency, and commission.
- Tallies of significant and other guidance documents, memoranda, and other “regulatory dark matter” by department, agency, and commission.
- Numbers and percentages of executive and independent agency rules deemed “Deregulatory” for E.O. 13,771 purposes.
- Numbers and percentages of rules affecting small business, Deregulatory component.
- Depictions of how regulations and guidance accumulate as a small business grows.
- Additional agency rules subject to Regulatory Impact Analysis and other scrutiny.
- Aggregate cost estimates of regulation by category: paperwork, economic, social, health and safety, environmental.
- Tallies of existing cost estimates, including subtotals by agency and grand total.
- Numbers and percentages of regulations that contain numerical cost estimates.
- Numbers and percentages lacking cost estimates, with explanation.
- Analysis of the *Federal Register*, including number of pages and proposed and final rule breakdowns by agency.
- Number of major rules reported on by the Government Accountability Office in its database of reports on regulations.
- Number and percentage of agency rules and guidance documents presented to Congress in accordance with the Congressional Review Act.
- Ranking of most active rulemaking agencies.
- Rules that only affect internal agency procedures.
- Number of rules new to the Unified Agenda, number of rules carried over from previous years.
- Numbers and percentages of rules facing statutory or judicial deadlines that limit executive branch ability to restrain them or for which weighing costs and benefits is statutorily prohibited.
- Percentage of rules reviewed by the Office of Management and Budget and actions taken.

13891 that are worth maintaining.⁵³⁴ Legislation such as the Guidance Out of Darkness Act (H.R. 1605, S. 628) could help address some of the shortcomings in guidance disclosure. In addition, current reporting distinguishes poorly between rules and guidance documents affecting the private sector and those affecting internal government operations.⁵³⁵

Additional information could be incorporated as warranted—for example, success or failure of special initiatives such as executive branch restructuring (from Al Gore’s “Re-inventing Government” under Clinton to Trump’s executive branch streamlining to Biden’s E.O. 14058 on “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government”⁵³⁶) or updates on ongoing regulatory reform or disclosure campaigns. Providing historical tables for all elements of the regulatory enterprise would prove useful to scholars, third-

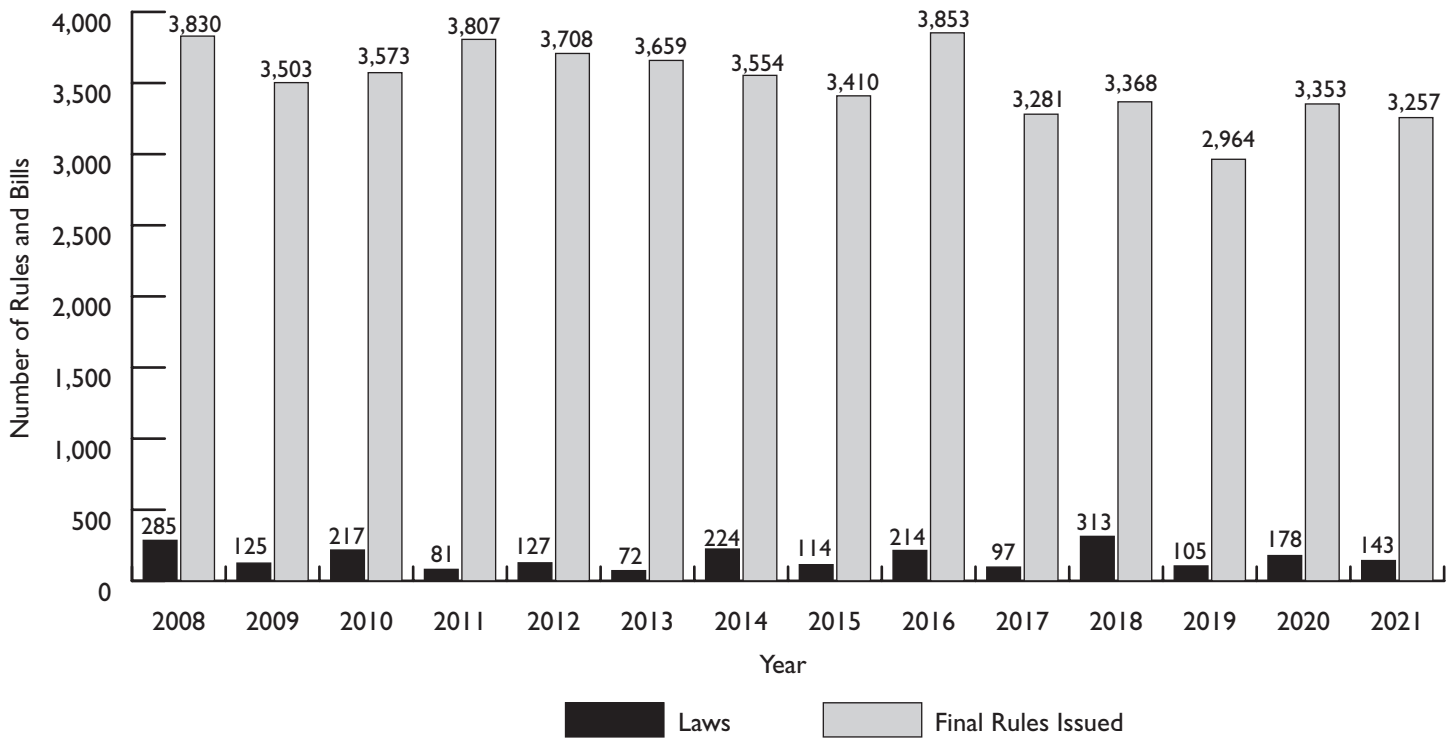
party researchers, members of Congress, and the public. By making agency activity more explicit, a regulatory transparency report card would help ensure that policy makers take the growth of the administrative state seriously, or at least afford it the same weight as fiscal concerns.

Ending Regulation without Representation: The “Unconstitutionality Index”—23 Rules for Every Law

Administrative agencies, rather than the elected Congress, do the bulk of U.S. lawmaking. Columbia University legal scholar Phillip Hamburger has described the rise of the modern administrative state as running counter to the Constitution, which “expressly bars the delegation of legislative power.”⁵³⁷ But agencies are not the primary

Administrative agencies, rather than the elected Congress, do the bulk of U.S. lawmaking.

Figure 24. The Unconstitutionality Index, 2008–2021



Source: *Federal Register* data from National Archives and Records Administration and from Crews tabulation at <http://www.tenthousandcommandments.com>. Public Laws data compiled from Government Printing Office, Public and Private Laws at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>; and from National Archives, Previous Sessions: Public Law Numbers at <http://www.archives.gov/federal-register/laws/past/index.html>.

23 agency rules for every law passed by Congress.

offenders. For too long, Congress has shirked its constitutional duty to make the tough calls. Instead, it routinely delegates substantial lawmaking power to agencies and then fails to supervise them.

The primary measure of an agency’s productivity—other than the growth of its budget and number of employees—is the body of regulation it produces.⁵³⁸ Agencies face significant incentives to expand their turf by regulating even without genuine need. It is hard to blame agencies for carrying out the very regulating they were set up to do in the first place. Better to point a finger at Congress and restore accountability there.

The “Unconstitutionality Index” is the ratio of rules issued by agencies relative to laws passed by Congress and signed by the president. In calendar year 2021, federal

regulatory agencies issued 3,257 final rules, whereas the 116th and 117th Congresses under Trump (in January 2021) and Biden secured passage into law a total of 143 bills (the corresponding figure in 2020 was 177 bills).⁵³⁹ That means nearly 23 rules were issued for every law passed in 2021 (there were 19 rules for every law in 2020; see Figure 24). There is overlap between Congresses in the calendar year depiction here. For example, the 143 laws enacted in 2021 included 62 signed by Trump.

The number of rules and laws can vary for many reasons, but the Unconstitutionality Index still provides some context about rules. The Unconstitutionality Index average over the past decade has been 26 rules issued for every law passed. However, in the context of Trump-era streamlining, the fact that eliminating a rule requires issuing

a new one meant that the Index, ironically, grew because of deregulation. (Appendix: Historical Tables, Part I, depicts the “Unconstitutionality Index” dating back to 1993 and the number of executive orders and agency notices, which could arguably be incorporated into the Index.) Rules issued by agencies are not usually related to the current year’s laws; typically, agencies’ rules comprise the administration of prior years’ legislative measures.

Mounting debt and deficits, now at unprecedented peacetime levels, can incentivize Congress to enact regulatory legislation rather than to increase government spending to accomplish policy ends. Congress often relies on “must-pass” appropriations and reauthorizations to push through some initiatives, while the dedicated legislation it does pass—like the Affordable Care Act and Dodd-Frank financial reform law—spawn thousands of pages of regulations.⁵⁴⁰

By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny. For example, if Congress wanted to boost job training, funding a program to do so would require legislative approval of a new appropriation for, say, the Department of Labor, which would appear in the federal budget and increase the deficit. As an alternative, one regulatory approach Washington could take would be to direct Fortune 500 companies to implement job training programs, to be carried out according to new regulations issued by the same Department of Labor. The latter option would add little to federal spending but would still let Congress take credit for the program.

Meanwhile, agency guidance documents and presidential directives now constitute a significant part of federal government activity. Such non-legislative policy making should be subject to greater disclosure.

An annual regulatory transparency report card is needed, but is not the complete response. Regulatory reforms that rely on agencies policing themselves within the lim-

ited restraints of the Administrative Procedure Act will not rein in the growth of the regulatory state or address the problem of regulation without representation. Rather, Congress should vote on agencies’ final rules before rules become binding on the public. Affirmation of new major and controversial regulations would ensure that Congress bears direct responsibility for every dollar of new regulatory costs.

The Regulations from the Executive in Need of Scrutiny Act (REINS) Act (H.R. 1776, S. 68, 117th Congress) offers one such approach. It would require Congress to vote to approve economically significant agency regulations.⁵⁴¹ Versions have passed the House in previous Congresses, but have not moved forward in the Senate. To avoid getting bogged down in approving myriad agency rules, Congress could vote on agency regulations in bundles rather than individually. Another way to expedite the process is via congressional approval or disapproval of new regulations by voice vote rather than by tabulated roll-call vote. What matters most is that members of Congress go on record for the laws the public must heed.

If Congress does not act, states could step in. The Constitution provides for states to check federal power, and pressure from states could eventually prompt Congress to address regulation. Many state legislators have indicated support for the Regulation Freedom Amendment, which reads, in its entirety: “Whenever one quarter of the members of the U.S. House or the U.S. Senate transmit to the president their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.”⁵⁴²

That amounts to an impelled version of the REINS Act for the rule in question. Congressional—rather than agency—approval of regulatory laws and their costs should be the main goal of reform, along with reassessment of bounds on the exercise of power by Congress in modern times.

When Congress ensures transparency and disclosure and finally assumes responsibil-

By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

ity for the growth of the regulatory state, the resulting system will be one that is fairer and more accountable to voters. Legislative reform of regulatory processes and executive branch streamlining are parts of more fundamental debates. Congress is responsible

for the fiscal budget, yet deficits remain the norm. The larger questions are over the role and legitimacy of the administrative state and the role of government in a constitutional republic.

Appendix: Historical Tables

Part A. Federal Register Page History, 1936–2020

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592

Source: National Archives and Records Administration, Office of the Federal Register.
 Publication of proposed rules was not required before the Administrative Procedure Act of 1946. Preambles to rules were published only to a limited extent before the 1970s.
 n/a = not available.

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687
2015	81,402	1,142	80,260
2016	97,069	1,175	95,894
2017	61,950	642	61,308
2018	68,082	857	67,225
2019	72,564	128	72,436
2020	87,347	991	86,356
2021	74,532	TBD	74,532

Part B. Number of Documents in the *Federal Register*, 1976–2021

Year	Final Rules	Significant subset	Proposed Rules	Significant subset	Other*	Total
1976	7,401		3,875		27,223	38,499
1977	7,031		4,188		28,381	39,600
1978	7,001		4,550		28,705	40,256
1979	7,611		5,824		29,211	42,646
1980	7,745		5,347		33,670	46,762
1981	6,481		3,862		30,090	40,433
1982	6,288		3,729		28,621	38,638
1983	6,049		3,907		27,580	37,536
1984	5,154		3,350		26,047	34,551
1985	4,843		3,381		22,833	31,057
1986	4,589		3,185		21,546	29,320
1987	4,581		3,423		22,052	30,056
1988	4,697		3,240		22,047	29,984
1989	4,714		3,194		22,218	30,126
1990	4,334		3,041		22,999	30,374
1991	4,416		3,099		23,427	30,942
1992	4,155		3,170		24,063	31,388
1993	4,369		3,207		24,017	31,593
1994	4,867		3,372		23,669	31,908
1995	4,747		3,223	222	23,133	32,996
1996	4,990	309	3,145	252	24,485	33,161
1997	4,649	267	2,912	226	26,260	32,587
1998	4,926	242	3,045	264	26,313	32,997
1999	4,674	232	3,287	335	26,074	32,987
2000	4,490	290	2,723	254	24,976	32,239
2001	4,136	297	2,514	206	25,392	31,676
2002	4,171	282	2,635	306	26,250	31,832
2003	4,284	335	2,597	314	25,168	31,907
2004	4,175	320	2,427	296	25,846	31,628
2005	3,978	257	2,510	197	26,020	31,514
2006	3,730	162	2,343	212	25,429	31,099
2007	3,590	180	2,295	308	24,784	30,911
2008	3,819	427	2,410	380	25,574	31,255
2009	3,467	371	2,013	330	25,218	30,506
2010	3,563	424	2,424	448	26,543	31,013
2011	3,806	422	2,876	483	26,296	31,708
2012	3,708	352	2,518	257	24,755	31,252
2013	3,658	331	2,567	315	24,517	31,251
2014	3,542	308	2,401	383	24,257	30,969
2015	3,408	345	2,341	379	24,294	30,775
2016	3,853	486	2,391	377	24,912	31,270
2017	3,280	222	1,837	176	22,132	30,143
2018	3,367	201	2,072	290	22,349	30,465
2019	2,964	261	2,132	375	22,181	30,122
2020	3,353	462	2,149	344	22,806	30,528
2021	3,257	387	2,094	272	17,170	23,180

Rules since 1993: 114,821; rules since 1975: 211,911; other since 1975: 1,164,101.

Source: National Archives and Records Administration, Office of the Federal Register.

* “Other” documents are presidential documents, agency notices, and corrections. n/a = not available at time of writing.

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2019

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Volumes**	Total Pages Complete CFR	Total CFR Volumes (exclud- ing Index)
	Titles 1–50 (minus Title 3)	Title 3 (POTUS Docs)	Index*	Total Pages Published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1,170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1,114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,136	160,751	8,544	169,295	230
2012	164,884	472	1,154	166,510	8,047	174,557	235
2013	166,352	520	1,170	168,042	7,454	175,496	235
2014	165,016	538	1,170	166,724	12,657	179,381	236
2015	170,278	495	1,170	171,943	6,334	178,277	237
2016	174,769	570	1,170	176,509	8,544	185,053	242
2017	178,628	846	1,170	180,644	5,730	186,374	242
2018	170,952	608	1,170	172,730	12,718	185,448	242
2019	172,022	1,092	1,170	174,284	11,700	185,984	242

Source: Chart from National Archives and Records Administration, Office of the Federal Register.
 *General Index and Finding Aids volume for 1975 and 1976. ** Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs, 1991–2021

Year	Average Days Review Time										
	Prerule reviews	Proposed rule reviews	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES reviews	Non-ES reviews	Days ES reviews	Days non-ES reviews	Overall average days
1991		1,201		1,322		2,523	142	2,381	39	29	29
1992		970		1,315		2,285	121	2,164	44	39	39
1993	2	976	6	1,155	28	2,167	106	2,061	53	42	43
1994	16	317	68	302	128	831	134	697	33	30	31
1995	8	225	64	270	53	620	74	546	41	35	35
1996	28	160	56	232	31	507	74	433	39	42	42
1997	20	196	64	174	51	505	81	424	47	54	53
1998	15	192	58	182	40	487	73	414	33	50	48
1999	19	247	71	214	36	587	86	501	51	53	53
2000	13	210	66	253	40	582	92	490	60	62	62
2001	9	274	95	285	37	700	111	589	46	60	58
2002	23	261	81	249	55	669	100	569	44	46	46
2003	23	232	92	309	59	715	101	614	42	50	49
2004	26	237	64	241	58	626	85	541	35	55	53
2005	18	221	66	247	59	611	82	529	39	59	57
2006	12	229	43	270	46	600	71	529	34	59	56
2007	22	248	44	250	25	589	85	504	49	64	61
2008	17	276	39	313	28	673	135	538	53	63	61
2009	28	214	67	237	49	595	125	470	33	40	39
2010	36	261	84	232	77	690	138	552	48	51	51
2011	24	317	76	262	61	740	117	623	51	60	58
2012	12	144	33	195	40	424	83	341	69	81	79
2013	11	177	33	160	37	418	104	314	121	143	137
2014	17	201	43	144	46	452	114	338	106	134	127
2015	8	178	29	164	35	415	130	285	84	90	88
2016	14	231	28	303	45	623	156	467	83	79	80
2017	13	84	12	103	24	237	70	167	56	74	68
2018	25	168	11	124	32	360	91	269	63	68	67
2019	26	234	25	147	41	474	117	357	77	80	79
2020	14	213	77	257	104	669	199	470	57	75	70
2021	30	170	58	173	71	502	172	330	58	61	59

Source: Author search on RegInfo.gov, "Review Counts" database search engine under Regulatory Review heading.
ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2020

Total Number of Rules under Consideration or Enacted

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105	2008	December	4,004
	October	4,005		October	5,119	2009	December	4,043
1988	April	3,941	1995	April	5,133			
	October	4,017		October	4,735			
1989	April	4,003	1996	April	4,570			
	October	4,187		October	4,680			
			1997	April	4,417			
				October	4,407			
			1998	April	4,504			
				October	4,560			
			1999	April	4,524			
				October	4,568			
2010s			2020s					
2010	December	4,225	2020	December	3,852			
2011	December	4,128	2021	December	3,772			
2012	Year-End*	4,062						
2013	November	3,305						
2014	November	3,415						
2015	November	3,297						
2016	November	3,318						
2017	December	3,209						
2018	October	3,534						
2019	October	3,752						

Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; also from online edition at <http://www.reginfo.gov>.

*Spring edition skipped in 2012.

Part F. Agenda Rules History by Department and Agency, 2002–2020

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
Department of Agriculture	114	185	114	114	140	155	160	159	276	265	287	327	374	290	311	292	279	323	314
Department of Commerce	196	294	279	247	231	246	270	250	415	328	296	300	325	303	302	296	273	300	270
Department of Defense	176	253	246	193	115	117	121	104	146	140	150	133	109	131	143	163	126	108	87
Department of Education	15	32	49	38	27	25	26	20	24	18	23	22	17	13	16	9	11	13	14
Department of Energy	132	134	97	87	97	107	105	92	108	96	96	85	54	47	63	61	50	66	53
Department of Health and Human Services	194	241	237	189	197	213	217	200	204	251	312	231	236	259	257	249	233	219	219
Department of Homeland Security	88	154	171	123	123	130	141	139	160	232	230	237	252	267	280	295	314	338	
Department of Housing and Urban Development	45	51	48	42	47	52	55	52	58	65	65	60	73	86	92	90	103	109	100
Department of Justice	78	86	70	68	94	100	102	95	112	120	137	121	138	140	139	124	125	122	249
Department of Labor	63	98	83	64	94	97	95	84	98	90	99	104	96	94	93	93	88	89	102
Department of State	59	77	75	64	38	44	47	41	63	35	30	18	27	28	28	24	21	15	41
Department of the Interior	246	296	233	183	285	288	324	353	320	325	259	277	287	264	305	303	287	295	298
Department of Transportation	221	295	298	255	240	210	216	220	232	224	223	230	200	199	215	227	301	365	543
Department of the Treasury	267	402	439	444	469	391	426	428	487	497	580	528	521	545	501	514	532	530	513
Department of Veterans Affairs	61	70	79	79	76	80	75	66	85	82	81	78	80	65	77	76	79	87	104
Advisory Council on Historic Preservation							1						0	0	0		1	1	1
Agency for International Development	15	13	8	9	14	8	7	5	10	14	14	12	7	10	8	10	8	8	7
American Battle Monuments Commission		1	1	2															
Architectural and Transportation Barriers Compliance Board		1	1	3	6	6	7	8	8	8	7	6	5	5	4	3	4	4	5
Broadcasting Board of Governors			3																
Commission on Civil Rights		1	1	1	1	1	1	1		1	1	1	2	1	1	1	1	1	1
Commodity Futures Trading Commission	25	40	36	32	35	34	26	33	83	68	56	32	25	19	14	11	15	15	19
Consumer Financial Protection Bureau	13	19	22	29	26	23	21	26	34										
Consumer Product Safety Commission	10	26	29	29	43	45	37	33	48	38	51	39	31	19	24	18	18	20	20
Corporation for National and Community Service	7	8	7	6	6	7	6	4	5	13	10	7	7	9	11	11	8	9	16
Council of Inspector General on Integrity and Efficiency		4	1	2	1														
Council on Environmental Quality	2	2	2																
Court Services/Offender Supervision, D.C.	7		5	6	4	4	3	3	3	3	2	2	2	2	1	1	1	3	7
CPBSD*	5	2	2	3	4	2	2	2	2	3	3	3	3	5	6	6	5	0	0
Defense Nuclear Facilities Safety Board				1															
Environmental Protection Agency	132	221	218	220	203	188	186	179	223	318	345	331	330	336	372	400	416	417	409
Equal Employment Opportunity Commission	13	10	7	8	10	8	8	9	9	7	7	7	5	7	8	6	3	4	4

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
National Science Foundation	1			3	2	1	3	2	3	3	2	3	3	0	2	3	3	2	2
National Transportation Safety Board	3	6	5	8	17	15	14												
Nuclear Regulatory Commission	34	56	51	60	62	65	60	53	73	64	63	61	54	53	45	49	42	45	39
Office of Federal Housing Enterprise Oversight													10	9	8	6	4	4	7
Office of Government Ethics	9	11	7	6	8	5	6	4	4	5	7	7	6	9	8	7	7	9	10
Office of Management and Budget	8	9	5	4	4	4	2	2	5	8	7	7	2	1	2	2	3	4	4
Office of National Drug Control Policy	2																		
Office of Personnel Management	34	37	26	22	38	40	67	54	73	87	77	77	80	75	93	94	103	90	72
Office of the Trade Representative	1			2	3														
Peace Corps	6	5	4	4	4	3	4	4	5	5	1	1	7	6	6	5	4	9	9
Pension Benefit Guaranty Corporation	9	14	16	17	13	12	12	13	13	12	10	10	12	12	13	9	6	4	6
Postal Regulatory Commission		5	4	3			2	2	2	1	3	2	2	3	0	0	0	0	0
Presidio Trust	3	2	4	4									0	0	0	2	2	1	2
Privacy and Civil Liberties Oversight Board		4		1				1					0	1	0	0	0	0	0
Railroad Retirement Board	1	7	6	4	2	1	1	1	1	1	1	1	3	2	6	5	6	11	13
Recovery Accountability and Transparency Board							3	3	2		1	3							
Securities and Exchange Commission	32	101	99	85	75	69	61	76	89	107	75	74	72	76	71	64	79	71	73
Selective Service System										1	1	1	1	1	1	1	1	1	1
Small Business Administration	51	40	30	29	30	33	30	30	43	48	51	39	26	28	32	34	29	33	40
Social Security Administration	15	15	31	27	36	42	39	44	49	53	63	58	64	63	53	68	59	64	63
Special Inspector General for Afghanistan Reconstruction				1	1				4										
Surface Transportation Board	4	9	7	10	20	12	8	9	10	11	5	5	6	4	7	3	4	5	5
Tennessee Valley Authority			1	1									0	0	0	0	0	2	2
U.S. Agency for Global Media	2	3																	
U.S. Chemical Safety and Hazard Investigation Board		1																	
U.S. Commission on Civil Rights	1	1																	
U.S. International Development Finance Corporation		1																	
Udall Institute for Environmental Conflict Res.													0	0	0	0	0	1	1
TOTAL	3,852	3,752	3,534	3,209	3,318	3,297	3,415	3,305	4,062	4,128	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266	4,187

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," Federal Register, various years' editions; and from online edition at <http://www.reginfo.gov>.

*Committee for Purchase from People Who Are Blind or Severely Disabled.

Part G. List of 295 Economically Significant Rules in the Pipeline, Fall 2021

Source: Compiled by Clyde Wayne Crews Jr. from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from online edition at <http://www.reginfo.gov>.

The “Regulation Identifier Number” or RIN appears at the end of each entry. For additional information, see “How to Use the Unified Agenda,” http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_HowTo.jsp.

ACTIVE RULEMAKINGS (205 actions)

DEPARTMENT OF AGRICULTURE

1. USDA/AgSEC, Final Rule Stage, Pandemic Assistance Programs, 0503-AA75
2. USDA/FSA, Final Rule Stage, Supplemental Dairy Margin Coverage Payments; Conservation Reserve Program; Dairy Indemnity Payment Program; Marketing Assistance Loans; Loan Deficiency Payments; Oriental Fruit Fly Program; and FSFL, 0560-AI59
3. USDA/RUS, Final Rule Stage, Rural Broadband Grant, Loan, and Loan Guarantee Program, 0572-AC46
4. USDA/AMS, Proposed Rule Stage, Organic Livestock and Poultry Standards, 0581-AE06
5. USDA/FNS, Proposed Rule Stage, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages, 0584-AE82
6. USDA/FNS, Proposed Rule Stage, Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans, 0584-AE88
7. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program Requirement for Interstate Data Matching, 0584-AE75
8. USDA/FNS, Final Rule Stage, Child Nutrition Programs: Temporary Standards for Milk, Whole Grains, and Sodium, 0584-AE81

DEPARTMENT OF COMMERCE

9. DOC/ADMIN, Final Rule Stage, Securing the Information and Communications Technology and Services Supply Chain, 0605-AA51

DEPARTMENT OF DEFENSE

10. DOD/COE, Proposed Rule Stage, Revised Definition of “Waters of the United States”—Rule 1, 0710-AB40
11. DOD/COE, Proposed Rule Stage, Revised Definition of “Waters of the United States”—Rule 2 (Reg Plan Seq No. XX), 0710-AB47

12. DOD/DODOASHA, Proposed Rule Stage, TRICARE: Chiropractic and Acupuncture Treatment Under the TRICARE Program, 0720-AB77
13. DOD/OS, Final Rule Stage, National Industrial Security Program Operating Manual (NISPOM), 0790-AK85

DEPARTMENT OF EDUCATION

14. ED/OPE, Prerule Stage, Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10), 1840-AD55
15. ED/OPE, Proposed Rule Stage, State-defined Processes for Ability to Benefit, 1840-AD51
16. ED/OPE, Proposed Rule Stage, Borrower Defense, 1840-AD53
17. ED/OPE, Proposed Rule Stage, Pell Grants for Prison Education Programs, 1840-AD54
18. ED/OPE, Proposed Rule Stage, Gainful Employment, 1840-AD57
19. ED/OPE, Proposed Rule Stage, Improving Student Loan Cancellation Authorities, 1840-AD59
20. ED/OPE, Proposed Rule Stage, Factors of Financial Responsibility, 1840-AD64
21. ED/OPE, Proposed Rule Stage, Income Contingent Repayment, 1840-AD69
22. ED/OPE, Proposed Rule Stage, Public Service Loan Forgiveness, 1840-AD70
23. ED/OPE, Proposed Rule Stage, Interest Capitalization, 1840-AD71

DEPARTMENT OF ENERGY

24. DOE/ENDEP, Proposed Rule Stage, Loan Guarantees for Projects that Employ Innovative Technologies, 1901-AB54
25. DOE/ENDEP, Proposed Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB55
26. DOE/EE, Prerule Stage, Energy Conservation Standards for Weatherized Gas, Oil, and Electric Furnaces, 1904-AF19
27. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Manufactured Housing, 1904-AC11

28. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces, 1904-AD20
29. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Water Heating-Equipment, 1904-AD34
30. DOE/EE, Proposed Rule Stage, Backstop Requirement for General Service Lamps, 1904-AF09
31. DOE/EE, Proposed Rule Stage, Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 1904-AB96
32. DOE/OGC, Proposed Rule Stage, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39
45. HHS/CMS, Proposed Rule Stage, Streamlining the Medicaid and CHIP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS-2421), 0938-AU00
46. HHS/CMS, Proposed Rule Stage, Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS-0056), 0938-AU19
47. HHS/CMS, Proposed Rule Stage, Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192), 0938-AU30
48. HHS/CMS, Proposed Rule Stage, Alternative Payment Model (CMS-5535), 0938-AU51
49. HHS/CMS, Proposed Rule Stage, Amendments to Rules Governing Organ Procurement Organizations (CMS-3409), 0938-AU54

DEPARTMENT OF HEALTH AND HUMAN SERVICES

33. HHS/FDA, Proposed Rule Stage, Medication Guide; Patient Medication Information, 0910-AH68
34. HHS/FDA, Proposed Rule Stage, Institutional Review Boards; Cooperative Research, 0910-AI08
35. HHS/FDA, Proposed Rule Stage, Nutrient Content Claims, Definition of Term: Healthy, 0910-AI13
36. HHS/FDA, Proposed Rule Stage, Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations, 0910-AI21
37. HHS/FDA, Proposed Rule Stage, Tobacco Product Standard for Characterizing Flavors in Cigars, 0910-AI28
38. HHS/FDA, Proposed Rule Stage, Tobacco Product Standard for Menthol in Cigarettes, 0910-AI60
39. HHS/FDA, Final Rule Stage, General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products, 0910-AH14
40. HHS/FDA, Final Rule Stage, Prohibition of Sale of Tobacco Products to Persons Younger Than 21 Years of Age, 0910-AI51
41. HHS/CDC, Final Rule Stage, Requirement for Proof of Vaccination or Other Proof of Immunity Against Quarantinable Communicable Diseases, 0920-AA80
42. HHS/SAMHSA, Proposed Rule Stage, Treatment of Opioid use Disorder With Extended Take Home Doses of Methadone, 0930-AA39
43. HHS/CMS, Proposed Rule Stage, Administrative Simplification: Adoption of Standards for Health Care Attachment Transactions and Electronic Signatures, and Modification to Referral Certification and Authorization Standard (CMS-0053), 0938-AT38
44. HHS/CMS, Proposed Rule Stage, Medicare Secondary Payer and Future Medicals (CMS-6047), 0938-AT85
50. HHS/CMS, Proposed Rule Stage, Improving Infection Prevention and Control in Long Term Care Facilities (CMS-3405), 0938-AU58
51. HHS/CMS, Proposed Rule Stage, Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS-4198), 0938-AU59
52. HHS/CMS, Proposed Rule Stage, HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911), 0938-AU65
53. HHS/CMS, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update (CMS-9904), 0938-AU67
54. HHS/CMS, Proposed Rule Stage, FY 2023 Skilled Nursing Facility (SNFs) Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1765), 0938-AU76
55. HHS/CMS, Proposed Rule Stage, CY 2023 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS-1766), 0938-AU77
56. HHS/CMS, Proposed Rule Stage, FY 2023 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1767), 0938-AU78
57. HHS/CMS, Proposed Rule Stage, CY 2023 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1768), 0938-AU79
58. HHS/CMS, Proposed Rule Stage, CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1770), 0938-AU81
59. HHS/CMS, Proposed Rule Stage, CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1772), 0938-AU82

60. HHS/CMS, Proposed Rule Stage, FY 2023 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1773-P), 0938-AU83
61. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS-1771-P), 0938-AU84
62. HHS/CMS, Proposed Rule Stage, Implementing Certain Provisions of the Consolidated Appropriations Act and Other Revisions to Medicare Enrollment and Eligibility Rules (CMS-4199), 0938-AU85
63. HHS/CMS, Proposed Rule Stage, Transitional Coverage for Emerging Technologies (CMS-3421), 0938-AU86
64. HHS/CMS, Proposed Rule Stage, Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs (CMS-0057), 0938-AU87
65. HHS/CMS, Proposed Rule Stage, Medicare, Medicaid and Health Insurance Exchanges Program Integrity (CMS-6084), 0938-AU90
66. HHS/CMS, Proposed Rule Stage, Requirements for Rural Emergency Hospitals (CMS-3419), 0938-AU92
67. HHS/CMS, Final Rule Stage, Durable Medical Equipment Fee Schedule, Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Non-Competitive Bidding Areas (CMS-1687), 0938-AT21
68. HHS/CMS, Final Rule Stage, Proficiency Testing Regulations Related to Analytes and Acceptable Performance (CMS-3355), 0938-AT55
69. HHS/CMS, Final Rule Stage, Requirements Related to Surprise Billing; Part II (CMS-9908), 0938-AU62
70. HHS/CMS, Final Rule Stage, Prescription Drug and Health Care Spending (CMS-9905), 0938-AU66
71. HHS/CMS, Final Rule Stage, CY 2023 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8080), 0938-AU71
72. HHS/CMS, Final Rule Stage, Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415), 0938-AU75
73. HHS/OCR, Proposed Rule Stage, Nondiscrimination in Health Programs and Activities, 0945-AA17
74. HHS/OCR, Final Rule Stage, HIPAA Privacy: Changes to Support, and Remove Barriers to, Coordinated Care and Individual Engagement, 0945-AA00
75. HHS/ACF, Proposed Rule Stage, Foster Care Legal Representation, 0970-AC89
76. HHS/ACF, Final Rule Stage, Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs, 0970-AC90

DEPARTMENT OF HOMELAND SECURITY

77. DHS/USCIS, Proposed Rule Stage, Deferred Action for Childhood Arrivals, 1615-AC64
78. DHS/USCIS, Proposed Rule Stage, Rescission of “Asylum Application, Interview, & Employment Authorization” Rule and Change to “Removal of 30 Day Processing Provision for Asylum Applicant Related Form I-765 Employment Authorization,” 1615-AC66
79. DHS/USCIS, Proposed Rule Stage, U.S. Citizenship and Immigration Services Fee Schedule, 1615-AC68
80. DHS/USCIS, Proposed Rule Stage, Modernizing H-1B Requirements and Oversight and Providing Flexibility in the F-1 Program, 1615-AC70
81. DHS/USCIS, Final Rule Stage, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers, 1615-AC67
82. DHS/USCBP, Proposed Rule Stage, Western Hemisphere Travel Initiative (WHTI)—Noncompliant Traveler Fee, 1651-AB06
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88. DOI/BOEM, Proposed Rule Stage, Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 1010-AE14
89. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations, 1018-BF07
90. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations, 1018-BF64

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93. DOJ/EOIR, Final Rule Stage, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers, 1125-AB20

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96. DOL/EBSA, Prerule Stage, Improved Fee Disclosure for Welfare Plans, 1210-AB37
97. DOL/EBSA, Proposed Rule Stage, Definition of the Term “Fiduciary”, 1210-AC02
98. DOL/EBSA, Proposed Rule Stage, Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 1210-AC03
99. DOL/EBSA, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update, 1210-AC12
100. DOL/EBSA, Final Rule Stage, Pension Benefit Statements-Lifetime Income Illustrations, 1210-AB20
101. DOL/EBSA, Final Rule Stage, Requirements Related to Surprise Billing, Part 1, 1210-AB99
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103. DOL/EBSA, Final Rule Stage, Requirements Related to Prescription Drug Reporting, 1210-AC07
104. DOL/OSHA, Prerule Stage, Process Safety Management and Prevention of Major Chemical Accidents, 1218-AC82
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107. DOL/OSHA, Final Rule Stage, Subpart U—Emergency Temporary Standard—COVID-19, 1218-AD36
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121. DOT/NHTSA, Proposed Rule Stage, Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, 2127-AM39
122. DOT/NHTSA, Final Rule Stage, Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21), 2127-AK95
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127. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, 1505-AC69
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130. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Extension of and Changes to Paycheck Protection Program, 1505-AC74
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132. TREAS/DO, Final Rule Stage, Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends, 1505-AC76
133. TREAS/DO, Final Rule Stage, Coronavirus State and Local Fiscal Recovery Funds, 1505-AC77
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142. TREAS/IRS, Final Rule Stage, Guidance Related to the Foreign Tax Credit, Clarification of Foreign-Derived Intangible Income, 1545-BP70
143. TREAS/IRS, Final Rule Stage, Requirements Related to Surprise Billing, Part 1, 1545-BQ01
144. TREAS/IRS, Final Rule Stage, Requirements Related to Surprise Billing, Part 1 (Temporary Regulation), 1545-BQ04
145. TREAS/IRS, Final Rule Stage, Requirements Related to Surprise Billing, Part 2 (Temporary Regulation), 1545-BQ05

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146. VA, Proposed Rule Stage, Schedule for Rating Disabilities—Ear, Nose, Throat, and Audiology Disabilities; Special Provisions Regarding Evaluation of Respiratory Conditions; Respiratory System, 2900-AQ72
147. VA, Proposed Rule Stage, Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders, 2900-AQ73
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150. VA, Proposed Rule Stage, Schedule for Rating Disabilities: The Digestive System, 2900-AQ90
151. VA, Proposed Rule Stage, Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure, 2900-AR10
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154. EPA/OW, Proposed Rule Stage, Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York, 2040-AG08
155. EPA/OAR, Proposed Rule Stage, Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards, 2060-AU41
156. EPA/OAR, Proposed Rule Stage, Standards of Performance for Steel Plants: EAFs Constructed after 10/21/74; on or Before 8/17/83; Standards of Performance for Steel Plants: EAFs; AOD Constructed after 8/17/83, 2060-AU96

- 157. EPA/OAR, Proposed Rule Stage, Renewable Fuel Standard (RFS) Program: RFS Annual Rules, 2060-AV11
- 158. EPA/OAR, Proposed Rule Stage, Volume Requirements for 2023 and Beyond Under the Renewable Fuel Standard Program, 2060-AV14
- 159. EPA/OAR, Proposed Rule Stage, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 2060-AV16
- 160. EPA/OAR, Proposed Rule Stage, Protection of Stratospheric Ozone: Standards Related to the Manufacture of Class II Ozone-Depleting Substances for Feedstock, 2060-AV29
- 161. EPA/OAR, Proposed Rule Stage, Phasedown of Hydrofluorocarbons: Updates to the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act for 2024 and Later Years, 2060-AV45
- 162. EPA/OAR, Proposed Rule Stage, NESHAP: Coal-and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review, 2060-AV53
- 163. EPA/OAR, Final Rule Stage, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Amendments, 2060-AU20
- 164. EPA/OAR, Final Rule Stage, Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 2060-AV13

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- 165. CPSC, Final Rule Stage, Regulatory Options for Table Saws, 3041-AC31

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- 166. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment, 9000-AN92

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- 167. FHFA, Final Rule Stage, Prior Approval of Enterprise Products, 2590-AA17
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- 169. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC-2020-0031], 3150-AK44

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- 170. OPM, Final Rule Stage, Requirements Related to Prescription Drug Reporting, 3206-AO27
- 171. OPM, Final Rule Stage, Requirements Related to Surprise Billing; Part I, 3206-AO30
- 172. OPM, Final Rule Stage, Paid Parental Leave and Miscellaneous Family and Medical Leave Act, 3206-AN96
- 173. OPM, Final Rule Stage, Requirements Related to Surprise Billing; Part II, 3206-AO29

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- 174. PBGC, Final Rule Stage, Special Financial Assistance by PBGC, 1212-AB53

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- 175. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program, 3245-AH34
- 176. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program, 3245-AH35
- 177. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans, 3245-AH36
- 178. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility, 3245-AH37
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- 180. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders, 3245-AH39
- 181. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Nondiscrimination and Additional Eligibility Criteria, 3245-AH40

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188. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 3245-AH47
189. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Telephone Cooperatives, 3245-AH48
190. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule, 3245-AH49
191. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule, 3245-AH50
192. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to the Third and Sixth Interim Final Rules, 3245-AH51
193. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 3245-AH52
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195. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Certain Eligible Payroll Costs, 3245-AH54
196. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs, 3245-AH56
197. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Consolidation of Interim Final Rules, 3245-AH58
198. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 3245-AH59
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200. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans, 3245-AH63
201. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 3245-AH65
202. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility, 3245-AH67
203. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act, 3245-AH77
204. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment, 3245-AH79
205. SBA, Final Rule Stage, Disaster Loan Program Changes, 3245-AH80

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206. USDA/AgSEC, Coronavirus Food Assistance Program 2; Producers of Sale-Based Commodities and Contract Producers, 0503-AA71
207. USDA/FNS, National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010, 0584-AE55

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208. DOC/NOAA, Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan, 0648-BK51

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- 209. ED/EDOGC, American Rescue Plan Elementary and Secondary School Emergency Relief Fund – Homeless Children and Youth (ARP-HCY), 1801-AA24
- 210. ED/OESE, American Rescue Plan Emergency Assistance to Non-Public Schools (ARP EANS) Program, 1810-AB63
- 211. ED/OPE, Federal-State Relationship Agreements, Pell Grant, ACG, National Smart Grant and LEAP, 1840-AD46
- 212. ED/OPE, Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act, 1840-AD48
- 213. ED/OPE, Subsidized Usage Limit, 1840-AD60

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- 214. DOE/EE, Determination of Energy Savings for the 2021 International Energy Conservation Code, 1904-AF15
- 215. DOE/EE, Standard 90.1-2019 Determination of Energy Savings, 1904-AF12

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- 216. HHS/CMS, Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Increased Safety (CMS-3347), 0938-AT36
- 217. HHS/CMS, Medicare Coverage of Innovative Technology (MCIT) and Definition of “Reasonable and Necessary” (CMS-3372), 0938-AT88
- 218. HHS/CMS, FY 2022 Skilled Nursing Facility Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1746), 0938-AU36
- 219. HHS/CMS, CY 2022 Home Health Prospective Payment System Rate Update, Home Infusion Therapy Services, and Quality Reporting Requirements (CMS-1747), 0938-AU37
- 220. HHS/CMS, FY 2022 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1748), 0938-AU38
- 221. HHS/CMS, CY 2022 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1749), 0938-AU39
- 222. HHS/CMS, FY 2022 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS-1750), 0938-AU40

- 223. HHS/CMS, FY 2022 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1754), 0938-AU41
- 224. HHS/CMS, CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1751), 0938-AU42
- 225. HHS/CMS, CY 2022 Hospital Outpatient Prospective Payment System Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1753), 0938-AU43
- 226. HHS/CMS, CY 2022 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8077), 0938-AU46
- 227. HHS/CMS, CY 2022 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8078), 0938-AU47
- 228. HHS/CMS, Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2022 (CMS-8079), 0938-AU48
- 229. HHS/CMS, Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond (CMS-9906), 0938-AU60
- 230. HHS/CMS, Requirements Related to Surprise Billing; Part I (CMS-9909), 0938-AU63
- 231. HHS/CMS, Medicaid Managed Care Risk-Sharing Mechanisms (CMS-2443), 0938-AU69

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- 232. DHS/USCIS, Removing H-4 Dependent Spouses from the Classes of Noncitizens Eligible for Employment Authorization, 1615-AC15
- 233. DHS/USICE, Visa Security Program Fee, 1653-AA77
- 234. DHS/USICE, Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media, 1653-AA78
- 235. DHS/FEMA, Prioritization and Allocation of Certain Scarce and Critical Health and Medical Resources for Domestic Use, 1660-AB01

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- 236. DOI/FWS, Regulations Governing Take of Migratory Birds, 1018-BD76
- 237. DOI/FWS, Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations, 1018-BE34

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238. STATE, Schedule of Fees for Consular Services, 1400-AE15

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239. TREAS/IRS, Revisions to the Section 168(k) Final Regulations, 1545-BP32
240. TREAS/OCC, Collective Investment Funds: Prior Notice Period for Withdrawals, 1557-AE99

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241. VA, Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program, 2900-AR05

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242. EPA/OAR, Phasedown of Hydrofluorocarbons under the American Innovation and Manufacturing Act, 2060-AV17

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243. CPSC, Flammability Standard for Upholstered Furniture, 3041-AB35

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244. NRC, Revision of Fee Schedules: Fee Recovery for FY 2021 [NRC-2018-0292], 3150-AK24

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245. SBA, Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program, 3245-AH55

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246. USDA/FSIS, Maximum Line Speed Under the New Poultry Inspection System, 0583-AD85
247. USDA/FNS, Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems, 0584-AE37
248. USDA/FNS, Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology, 0584-AE39

249. USDA/FNS, Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments, 0584-AE43
250. USDA/FNS, Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs, 0584-AE67
251. USDA/FNS, Supplemental Nutrition Assistance Program (SNAP): Standardization of State Heating and Cooling Standard Utility Allowances, 0584-AE69
252. USDA/FNS, Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP), 0584-AE71

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253. DOD/DARC, Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041), 0750-AK81
254. DOD/OS, Cybersecurity Maturity Model Certification (CMMC) Framework, 0790-AL49

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255. ED/OS, Debt Collection Practices, 1894-AA12

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256. HHS/FDA, Requirements For Additional Traceability Records For Certain Foods, 0910-AI44
257. HHS/CMS, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020; Risk Adjustment Data Validation (CMS-4185), 0938-AT59
258. HHS/CMS, Most Favored Nation (MFN) Model (CMS-5528), 0938-AT91
259. HHS/CMS, Policy and Technical Changes to the Medicare Advantage Program and Medicare Prescription Drug Benefit Program; MOOP and Cost Sharing Limits (CMS-4190), 0938-AT97
260. HHS/CMS, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Policy Issues and Level II of the Healthcare Common Procedure Coding System (HCPCS) (CMS-1738), 0938-AU17
261. HHS/CMS, Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage (CMS-1739), 0938-AU24
262. HHS/CMS, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS-1752), 0938-AU44

263. HHS/CMS, COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals With Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff (CMS-3414), 0938-AU57

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264. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Nonimmigrants in the United States, 1615-AC06
265. DHS/USCIS, Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions, 1615-AC61
266. DHS/USCBP, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
267. DHS/USCBP, Collection of Biometric Data From Non-citizens upon entry to and exit from the United States, 1651-AB12
268. DHS/FEMA, Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 1660-AA99

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269. DOI/BSEE, Revisions to Decommissioning Requirements on the OCS, 1014-AA53

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270. DOL/ETA, Temporary Non-Agricultural Employment of H-2B Nonimmigrants in the United States, 1205-AB76
271. DOL/WHHD, Modernizing the McNamara-O'Hara Service Contract Act Regulations, 1235-AA38

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272. DOT/FAA, Prohibit or Restrict the Operation of an Unmanned Aircraft in Close Proximity to a Fixed Site Facility, 2120-AL33
273. DOT/FMCSA, Heavy Vehicle Speed Limiters, 2126-AB63
274. DOT/NHTSA, Heavy Vehicle Speed Limiters, 2127-AK92
275. DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150 - Vehicle to Vehicle (V2V) Communication, 2127-AL55
276. DOT/NHTSA, Retroreflective Tape and Underride Guards for Single Unit Trucks, 2127-AL57
277. DOT/PHMSA, Pipeline Safety: Class Location Requirements, 2137-AF29

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278. TREAS/FINCEN, Financial Crimes Enforcement Network: Cross-Border Electronic Transmittals of Funds, 1506-AB01
279. TREAS/IRS, Guidance Under Section 954(b)(4) (Rules for High-Taxed Subpart F Income) and Section 964 (Rules for Determining the Earnings and Profits of a Foreign Corporation), 1545-BP62
280. TREAS/IRS, Continuing Guidance under Section 163(j), 1545-BQ25
281. TREAS/OCC, Implementation of Emergency Capital Investment Program, 1557-AF09
282. TREAS/CDFIF, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

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283. VA, Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter, 2900-AR25
284. VA, Civilian Health and Medical Program of the Department of Veterans Affairs, 2900-AP02
285. VA, Reimbursement for Emergency Treatment, 2900-AQ08

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286. EPA/OW, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AG23
287. EPA/OAR, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 2060-AV49
288. EPA/OAR, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 3, 2060-AV50

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289. FCC, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268), 3060-AJ82
290. FCC, Processing Applications in the Direct Broadcast Satellite (DBS) Service; Feasibility of Reduced Orbital Spacing for Provision of DBS Service in the United States (IB Docket No. 06-160), 3060-AI86
291. FCC, Parts 2 and 25 to Enable GSO FSS in the 17.3-17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power

- Limits for Extended Ka-Band FSS (IB Doc. No. 20-330), 3060-AL28
292. FCC, Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promoting the Open Internet (GN Docket No. 14-28), 3060-AK21
293. FCC, Call Authentication Trust Anchor, 3060-AL00
294. FCC, Implementation of the National Suicide Improvement Act of 2018, 3060-AL01

NUCLEAR REGULATORY COMMISSION

295. NRC, Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC-2021-0024], 3150-AK58

Part H. Rules Affecting Small Business, 1999–2019

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Dept. of Agriculture	30	24	31	46	40	47	45	80	65	84	87	93	73	67	54	52	64	39	56	47	49
Dept. of Commerce	85	90	90	94	109	112	103	158	115	98	90	107	112	111	108	79	74	77	89	98	88
Dept. of Defense	4		1	1	10	7	12	25	26	16	12	7	13	14	13	12	13	6	8	7	15
Dept. of Education	2	2	2		1	2	3		1	1	0	0	0	1	0	0	0	1	0	0	0
Dept. of Energy	14	12	15	14	8	4	5	8	6	3	2	1	1	0	0	0	1	0	1	1	0
Dept. of Health and Human Services	60	64	67	73	93	103	91	85	100	112	94	93	96	109	112	106	96	92	108	107	75
Dept. of Homeland Security	27	28	27	25	22	25	28	27	34	37	35	42	44	43	43	38	33	0	0	0	0
Dept. of Housing and Urban Development	1	1	2	2	1				0	1	0	1	5	4	4	6	11	6	3	0	1
Dept. of the Interior	18	13	9	30	35	30	23	24	23	18	17	18	19	29	21	20	26	17	20	18	33
Dept. of Justice	4	5	5	12	9	10	10	9	9	5	3	2	5	7	8	8	8	13	15	14	14
Dept. of Labor	31	26	12	20	22	24	22	24	23	26	29	29	26	26	19	19	23	22	26	40	38
Dept. of State	31	31	25	14	18	21	20	31	21	20	4	3	1	0	1	1	2	6	3	2	0
Dept. of Transportation	39	46	47	56	61	53	68	65	56	49	45	41	43	60	63	103	151	216	244	266	246
Dept. of the Treasury	36	34	36	41	23	27	29	39	47	56	48	47	45	37	41	38	27	26	27	31	15
Dept. of Veterans Affairs	2		1	1	1	1	2	1	2	3	2	2	0	0	0	0	0	1	1	3	6
Agency for International Development									1	1	0	0	1	1	0	0	1	2	1	0	0
Arch. and Trans. Barriers Compliance Board			1	2	2	1	1	1	1	1	0	0	0	0	0	0	0	1	1	2	2
Commodity Futures Trading Commission	1	2	2	2		1			0	1	1	1	1	0	1	1	2	0	0	0	0
Consumer Financial Protection Bureau	12	10	8	3	4	3	4	8	5												
Consumer Product Safety Commission	5	8	5	4	2			2	0			0	0	1	0	0	0	0	0	0	0
Corporation for National and Community Service									0	0	0	0	0	1	1	0	0	0	0	0	0
Environmental Protection Agency	6	3	4	14	12	6	6	49	73	95	89	83	85	95	110	122	135	167	185	205	179
Equal Employment Opportunity Commission	5	3	3	2	2	2	2	3	5	5	4	2	3	3	3	0	0	0	2	0	0
Federal Emergency Management Agency													0	0	0	0	0	1	1	1	0
Federal Acquisition Regulation	60	53	43	38	22	24	17	15	10	5	4	6	5	5	7	5	5	6	9	13	16

Part H. Rules Affecting Small Business, 1998–2019 (continued)

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Federal Communications Commission	69	61	77	92	99	98	99	89	78	112	110	110	109	108	113	113	104	109	117	105	91
Federal Deposit Insurance Corporation	4				4		4	5	2	1											
Federal Energy Regulatory Commission									0			0	1	0	0	0	0	0	0	0	1
Federal Housing Finance Board									0			0	0	0	0	0	0	0	0	0	0
Federal Maritime Commission				3	1	1	1	1	3	3	3	3	2	3	5	7	10	7	6	7	4
Federal Reserve System	3	4	2	2	4	7	5	12	17	8	6	5	5	3	6	5	3	7	10	8	2
Federal Trade Commission	16	14	18	16	18	21	18	21	22	16	16	13	11	13	12	11	9	9	9	9	10
Federal Mediation and Conciliation Service									0			0	0	0	0	0	0	0	1	1	0
General Services Administration	24	28	15	13	10	4	2	3	4	5	6	7	3	3	3	1	5	4	1	1	2
National Aeronautics and Space Administration				1	1	1	2	2	3			0	0	0	0	0	0	0	0	0	0
National Archives and Records Administration									0			0	0	0	1	1	1	0	0	0	0
National Credit Union Administration								2	4	4	7	3	1	4	1	2	0	0	0	0	0
National Endowment for the Arts	2	2	2	2	2	2	2	2				0	0	0	0	0	2	2	0	0	0
National Endowment for the Humanities									0			0	0	0	0	0	0	0	0	0	0
National Labor Relations Board	2	1																			
Nuclear Regulatory Commission	3	3	3	3	3	4	3	6	3	1	2	1	2	1	1	0	3	5	5	3	5
Office of Management and Budget	2	1							0			0	0	0	0	0	0	0	0	1	2
Pension Benefit Guaranty Corporation				1																	
Railroad Retirement Board									0			0	0	0	0	0	0	0	0	0	0
Resolution Trust Corporation														0	17	0	0	0	0	0	0

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Small Business Administration	11	15	17	19	28	23	27	38	35	39	20	13	15	21	19	18	24	21	21	24	28
Social Security Administration									1		1	1	1	1	1	1	1	1	0	0	2
Surface Transportation Board	1	1	1	2		1															
Securities and Exchange Commission	34	20	19	24	11	9	15	19	27	21	21	19	29	16	0	20	25	28	26	40	39
TOTAL	644	605	590	671	674	674	669	854	822	845	758	753	757	787	788	789	859	892	996	1054	963

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," Federal Register, various years' editions, www.reginfo.gov.

Part I. The Unconstitutionality Index, 1993–2020

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders	Executive Memos
1993	4,369	210	21			
1994	4,867	255	19			
1995	4,713	88	54	23,105	40	
1996	4,937	246	20	24,361	50	
1997	4,584	153	30	26,035	38	
1998	4,899	241	20	26,198	38	
1999	4,684	170	28	25,505	35	
2000	4,313	410	11	25,470	39	13
2001	4,132	108	38	24,829	67	12
2002	4,167	269	15	25,743	32	10
2003	4,148	198	21	25,419	41	14
2004	4,101	299	14	25,309	46	21
2005	3,975	161	25	25,353	27	23
2006	3,718	321	12	25,031	25	18
2007	3,595	188	19	24,476	32	16
2008	3,830	285	13	25,279	29	15
2009	3,503	125	28	24,753	44	38
2010	3,573	217	16	26,173	41	42
2011	3,807	81	47	26,161	33	19
2012	3,708	127	29	24,408	39	32
2013	3,659	72	51	24,261	24	32
2014	3,554	224	16	23,970	34	25
2015	3,410	114	30	24,393	29	31
2016	3,853	214	18	24,557	45	36
2017	3,281	97	34	22,137	63	38
2018	3,368	313	11	22,025	35	30
2019	2,964	105	28	21,804	47	26
2020	3,353	178	19	22,480	69	59
2021	3,257	143	23	21,985	93	31

Sources: Final rules, notices, and executive orders compiled from database at National Archives and Records Administration, Office of the Federal Register, <https://www.federalregister.gov/documents/search#advanced>; Public laws from Government Publishing Office, Public and Private Laws, <https://www.govinfo.gov/app/collection/PLAW/>

Notes

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IV. Notice and Public Comment for Economically Significant Guidance Documents:

1. In General: Except as provided in Section IV(2), when an agency prepares a draft of an economically significant guidance document, the agency shall:

a. Publish a notice in the *Federal Register* announcing that the draft document is available;

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About the Author

Clyde Wayne Crews, Jr. is Vice President for Policy at the Competitive Enterprise Institute (CEI). He is widely published and a contributor to *Forbes*. A frequent speaker, he has appeared at venues including the DVD Awards Showcase in Hollywood, European Commission–sponsored conferences, the National Academies, the Spanish Ministry of Justice, and the Future of Music Policy Summit. He has testified before Congress on various policy issues. Crews has been cited in dozens of law reviews and journals. His work spans regulatory reform, antitrust and competition policy, safety and environmental issues, and various information-age policy concerns.

Alongside numerous studies and articles, Crews is co-editor of the books *Who Rules the Net? Internet Governance and Jurisdiction*, and *Copy Fights: The Future of Intellectual Property in the Information Age*. He is co-author of *What's Yours Is Mine: Open Access and the Rise of Infrastructure Socialism*, and a contributing author to other books. He has written in the *Wall Street Journal*, *Chicago Tribune*, *Communications Lawyer*, *International Herald Tribune*, and other publications. He has appeared on Fox News, CNN, ABC, CNBC, and the PBS News Hour. His policy proposals have been featured prominently in the *Washington Post*, *Forbes*, and *Investor's Business Daily*.

Before coming to CEI, Crews was a scholar at the Cato Institute. Earlier, Crews was a legislative aide in the U.S. Senate, an economist at Citizens for a Sound Economy and the Food and Drug Administration, and a fellow at the Center for the Study of Public Choice at George Mason University. He holds a Master's of Business Administration from the College of William and Mary and a Bachelor's of Science from Lander College in Greenwood, South Carolina. While at Lander, he was a candidate for the South Carolina state senate. A dad of five, he can still do a handstand on a skateboard and enjoys custom motorcycles.



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