Congress Needs to Stand Up for Millennial Entrepreneurs

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Introduction

Chairman Marino, Vice-Chairman Farenthold, and other Members of House Judiciary Committee, thank you for the opportunity to give testimony on how the current model of federal regulation stands in the way of millennial entrepreneurs. I am a fellow at Economics21 at the Manhattan Institute for Policy Research and am the coauthor, with Diana Furchtgott-Roth, of *Disinherited: How Washington Is Betraying America's Young*.[1] Since this summer, I have traveled across the country and heard millennials talk about the economic problems they are facing and their plans for the future.

The American economy is changing, and millennials' attitudes about work and their careers are changing with it. The rapid rise of the so-called "sharing economy" embodies many young Americans' new economic ideal—one driven by technology, convenience, and flexibility. However, government policy, particularly in regards to regulation, ignores the realities of a 21st century economy and continues to hold back millennials' economic opportunity.

Congress has granted executive and independent agencies freedom to regulate with minimal oversight. Agencies have taken advantage of this delegation by utilizing flawed rule-making processes that mislead the public.

To make matters worse, these agencies consistently understate the costs that their pronouncements place on young Americans. Congress must to take steps to reassert its authority over the economy by reining in the accelerating growth in federal regulation. At the very least, Congress needs to act as a countervailing weight to the pro-regulation bias that permeates agencies. Millennials have entrepreneurial dreams, and their elected representatives need to take these steps to help them realize their goals.

Innovation Empowers Consumers

Before exploring how regulations hold back millennials' economic opportunity, it is important to show how technology has made today's economy more consumer-friendly. This means that regulators do not have to play as large of a role in protecting the public. This is because the main—or at least stated—justification behind federal regulation is consumer protection. A few decades ago, before ubiquitous Internet

[1] Diana Furchtgott-Roth and Jared Meyer, *Disinherited: How Washington Is Betraying America's Young*, Encounter Books, May 12, 2015.

access, this reasoning may have made some sense. But in today's economy, information is in consumers' hands due to the Internet's user-generated content.

In the past, customers controlled the buying decision, but products or services and information about them were controlled, or at least heavily influenced, by businesses. Thanks to the disruption caused by Internet access, consumers have much greater access to information than ever before. As the power dynamic continues to shift in favor of customers, the need for an expansive regulatory framework further diminishes.

The Internet's promotion of user interaction, sharing, and collaboration is behind this change in market power. The sharing economy naturally extends these capabilities by embracing robust feedback systems.

Two of the brightest stars of the sharing economy, Uber and Airbnb, use post-service, dual-feedback systems where customers and service providers both leave reviews. This process reinforces positive behavior and weeds out those who make transactions difficult or unenjoyable. Customers learn that they can trust these reviews, and feedback allows companies to cut ties with those who consistently receive negative criticism.

Even with this monumental shift in the economy, regulators continue to operate as if Yelp, Google Reviews, and Angie's List do not exist. Regulators also ignore the reality that firms cannot stay in business if they disappoint customers. Those who feel that a good or service they purchased did not live up to their expectations are just a few clicks away from letting anyone in the world who has Internet access hear about their frustration. For a business, this is a punishment as great, or greater than, a negative report from a regulator. The user-generated content that populates review sites and social media has even been referred to as "word of mouth on steroids."[2]

People are careful about which sites and reviews they rely on. Peer-to-peer online interaction is similar to word-of-mouth reviews—they both rely on trust. Because feedback is increasingly linked to reviewers' public Internet profiles, the level of faith in reviews has greatly improved. Ten years ago, who would have thought that someone would willingly enter an unlicensed stranger's car or stay at a stranger's home?

It is no coincidence that the Internet technology field offers the most opportunities for young Americans, and that it is also the least regulated. If the innovative entrepreneurs

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[2]Jim Blasingame, *The Age of the Customer: Prepare for the Moment of Relevance*, SBN Books, January 6, 2014.

behind some of today's most popular Internet companies needed to gain government's permission to innovate, or comply with as many regulations as the energy and manufacturing sectors, we would likely not have Twitter, Snapchat, Facebook, or even Apple. These are pioneering companies that many young Americans use on a daily basis for everything from entertainment to news.

The policy President Bill Clinton endorsed of letting Internet companies develop mostly free of regulatory burdens contributed to the sector's rapid growth—and the consumer empowerment that came with it. Internet companies have still managed to largely escape regulation, though this is rapidly changing.

Regulations that affect Internet companies are, of course, promulgated in the name of consumer protection, but they threaten to unravel the increased access to information brought about by the peer-to-peer economy. Efforts to cripple job creation by making it more difficult to hire independent contractors are another example of policymakers regulating in search of a problem that is simply not there.

The public is starting to catch on to how out of touch regulators are with today's realities. Perhaps because of the promising rise of popular sharing economy services, and the subsequent hostile response of some legislatures, only 18 percent of millennials believe regulators primarily have the public's interest in mind.[3] Young people realize that many regulations serve to protect special interests, not public safety. Millennials want companies to be held liable for harming consumers, but they do not support regulations that keep out new competition or dictate how entrepreneurs must meet their customers' needs.

When crafting regulation, policymakers need to keep in mind that the relationship between consumers and service providers has been transformed for the better. Rather than keeping consumers safe, regulators are threatening the growth of the peer-to-peer system that has proven to be the most effective way to increase consumers' access to information.

Regulations Stand in the Way of Millennial Entrepreneurs

The once-dynamic American economy is stagnating. The Brookings Institution reports that business startup rates are much lower now than they were in the second half of the

[3] Emily Ekins, *Millennials: The Politically Unclaimed Generation*, Reason-Rupe, July 10, 2014.

20th century.[4] Business dynamism, determined by firm entry, firm exit, and job reallocation rates, has also declined. This fall in entrepreneurship is leading to the aging of American businesses. In 1992, 23 percent of firms had existed for 16 years or more. By 2011, this percentage had increased to 34 percent.[5]

New business formation is vital for economic growth. Young Americans desperately need more employment opportunities, as 20- to 24-year-olds still face an unemployment rate of over 8 percent.[6] For teenagers, the unemployment rate is 16 percent.

A decline in entrepreneurship is troubling for the economy for a variety reasons—especially when starting a business is seen as a major part of the American dream for many millennials.

Millennials have been called the most entrepreneurial generation. While this may be true based on their desires to start businesses and their near-universal respect for entrepreneurs such as Steve Jobs, few young Americans have followed through on their entrepreneurial dreams. Millennials' failure to start businesses follows the troubling trend of declining entrepreneurship and dynamism in the U.S. economy.

A Bentley University survey of millennials found that 66 percent of respondents want to start their own business.[7] Echoing these findings, Deloitte found that about 70 percent of millennials envision working independently at some point in their careers.[8]

Yet, as of 2013, only 3.6 percent of private businesses were at least partially owned by someone under the age of 30. This is the lowest proportion since the Federal Reserve began collecting data nearly a quarter-century ago.[9]

A major factor that hinders the ability of young entrepreneurs to start new businesses and work for themselves is government regulation. While it is difficult to gain a full picture of the federal regulatory burden, it is undoubtedly vast, as the U.S. Code of

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[4] Ian Hathaway and Robert E. Litan, *Declining Business Dynamism in the United States: A Look at States and Metros*, Brookings Institution, May 2014.
[5] Ian Hathaway and Robert E. Litan, *The Other Aging of America: The Increasing Dominance of Older Firms*, Brookings Institution, July 31, 2014.
[6] *The Employment Situation*, Bureau of Labor Statistics, February 5, 2016.
[7] *The Millennial Mind Goes to Work*, Bentley University, November 11, 2014.
[8] *The Deloitte Millennial Survey*, Deloitte, January 2014.
[9] Ruth Simon and Caelainn Barr, *Endangered Species: Young U.S. Entrepreneurs*, The Wall Street Journal, January 2, 2015.

Federal Regulations is over 175,000 pages long.[10] Even though the number of pages of regulation has steadily accumulated since the 1970s, five of the six all-time-high annual page counts have occurred during President Obama's tenure.[11]

These thousands of pages of regulation are not simply legalese. Instead, there are over one million commandments from Washington in the form of restrictive words such as "must," "cannot," or "shall."[12] Most of these restrictions have little to no connection to protecting public safety. Starting and running a business requires a lot of time and hard work. Attempting to comprehend which of these million restrictions apply to their businesses is a waste of young entrepreneurs' valuable time.

While evaluating restrictive terms in the Code of Federal Regulations is an imperfect way to measure the level of government control over the economy, it offers an approximate guide to the extent of regulation. Page counts, another approximate guide, can be misleading since regulations that are only a few paragraphs long could have much greater effects than those that stretch for pages.

But the reason that Americans must rely on imprecise measures is that the vast majority of regulations are never subjected to even a basic cost-benefit analysis. This creates an incomplete, understated picture of the total regulatory burden. For example, during 2014 only 13 of the over 3,500 rules published in the Federal Register had both cost and benefit analyses and an additional 3 rules only had cost analyses.[13]

This lack of oversight occurred even though there were 290 significant rules and 69 economically significant agency rules in 2014. These types of rules generally have over $100 million in annual negative effects on the economy, and they are supposed to go through rigorous internal or Office of Information and Regulatory Affairs cost/benefit analyses.[14] This problem is not a recent phenomenon—since 2001, less than 3 out of every 1,000 regulations has had an accompanying cost and benefit analysis.

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[10] *Code of Federal Regulations Page Breakdown – 1975 through 2014*, Office of the Federal Register, 2015.

[11] Clyde Wayne Crews Jr., *Ten Thousand Commandments: 2015 Edition*, Competitive Enterprise Institute, May 8, 2015.

[12] *Regdata: Historical Regulation Data*, Mercatus Center at George Mason University, February 2016.

[13] Clyde Wayne Crews Jr. *Mapping Washington's Lawlessness 2016,* Competitive Enterprise Institute, December 2015.

[14] Maeve P. Casey, Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register, Congressional Research Service, July 14, 2015.

With federal regulation conservatively estimated to cost the economy $1.9 trillion a year,[15] there is no excuse for this level of regulation escaping basic cost/benefit analyses. While regulatory compliance—and the lost economic growth that comes with it—are often referred to as a hidden tax, the costs of federal regulations are becoming clearer as executive and independent agencies' reach into young Americans' lives grows.

Another problem with America's regulatory system is that agencies are increasingly acting as legislators. Over the decade stretching from 2005 to 2014, the average annual number of promulgated regulations was 26 times greater than the number of enacted laws. In 2015, there were over 50 new regulations for each law that Congress passed.

Agencies are also able to avoid transparency and public review. The public notice and comment requirements under the Administration and Procedure Act do not apply to agency guidance documents, memorandum, or notices and bulletins. This "regulatory dark matter" or "shadow regulation" does not show itself in traditional measures of regulation, even though they can impose substantial burdens on young Americans.[16]

Barriers to Flexible Work

The U.S. Department of Labor's efforts to make it more difficult for independent contractors to work are one example of an executive agency misusing its delegated powers in a way that harms millennials. The Labor Department recently issued an administrator's interpretation, in the form of a blog post that was effective immediately, to clarify the definition of an independent contractor. It states that "most workers are employees," not independent contractors.[17]

The popularity of the sharing economy has propelled the distinction between independent contractors and employees into the forefront of policy. This is an important debate that the public needs to take part in through the legislative process. Congress cannot continue to let unelected bureaucrats determine the future of America's labor market.

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[15] Clyde Wayne Crews Jr., *Tip of the Costberg,* Competitive Enterprise Institute, December 2015.
[16] Clyde Wayne Crews Jr. *Mapping Washington's Lawlessness 2016,* Competitive Enterprise Institute, December 2015.
[17] David Weil, *Administrator's Interpretation No. 2015-1*, Department of Labor, July 15, 2015.

Right now, workers are either categorized as employees or independent contractors. Employees are given many protections and benefits that are not available to contractors. In exchange, employers set the conditions of workers' terms of employment. On the other hand, the independent contractor model provides workers with more control and flexibility.

The distinction between contractors and full-time employees can have important implications for millennials. The American Dream may have once been finding employment at a large company, working there for a few decades, and then retiring with a defined-benefit pension, but now millennials' American Dream looks much different than their parents' and grandparents'. New opportunities to change or advance one's career are prioritized, and individualized, flexible work arrangements are the model of the future.

The Labor Department's new interpretation, which did not have to go before the public for comments, formally accepts the so-called "economic realities" six-part test for determining whether workers are employees or contractors.[18] At the same time, it downplays one of the six criteria, a lack of control over workers' hours, as a determinant of employment status.

Shifting from independent contractors to employees is costly. The Labor Department's Employment Cost Index shows that providing benefits adds around 30 percent to the cost of employing a worker.[19] This estimate is not an overstatement. When MyClean (the Uber of housecleaning) moved from independent contractors to full-time employees, its labor costs increased 40 percent, according to its CEO.[20] A similar company, Homejoy, shut down this year due to labor classification disputes.[21]

Something similar could happen to Uber, as one California driver who brought a case against the company was legally classified as an Uber employee.[22] If this ruling against Uber's current business model is extended to the rest of the company and the emerging sharing economy as a whole, many other startups and young workers will suffer.

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[18] *Fact Sheet 13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, Department of Labor, May 2014.
[19] *Employment Cost Index,* Bureau of Labor Statistics, October 2015.
[20] Kate Rogers, *What the Uber, Lyft lawsuits mean for the US Economy*, CNBC, March 16, 2015.
[21] *Homejoy says goodbye, and thank you,* Homejoy, July 17, 2015.
[22] *Uber Technologies, Inc. vs. Barbara Berwick*, California Labor Commission, June 16, 2015.

This could very well happen. Uber faces a class action lawsuit *O'Connor v. Uber Technologies Inc.* over its employment classification practices.[23] Lyft just settled its pending employment classification class action lawsuit *Cotter v. Lyft Inc.* for $12.25 million.[24] Lyft can continue to classify its drivers as independent contractors—a designation that is crucial to the sharing economy's success. But even though the settlement does not carry any legal precedent, it will lead to additional lawsuits and uncertainty for other sharing-economy companies. This will raise the costs of these services, costs that will be passed on to consumers.

The flexibility that independent contractor status offers workers is vital to the sharing economy's success. While some workers use these platforms full time, the vast majority use them for part-time work or supplemental income. About 8 in 10 Lyft drivers choose to drive 15 hours a week or less, and half of Uber drivers use the platform for less than 10 hours a week. Independent contractor status allows the decision of when or for how long to work to be controlled by workers, not companies.

Control over one's hours is a valuable option that needs to be maintained. When 600 Uber driver-partners were asked the question, "If both were available to you, at this point in your life, would you rather have a steady 9-to-5 job with some benefits and a set salary or a job where you choose your own schedule and be your own boss?," 73 percent said that they prefer flexibility over the traditional employment model.[25]

An analysis of its customers' bank accounts by JPMorgan Chase & Co. shows that one out of every 100 Americans earned income through a sharing economy platform in September 2015.[26] This is up from one in every 1,000 in October 2012. Over the three-year study, over 4 percent of Americans earned income through the sharing economy.

While the sharing economy still accounts for a small percentage of overall U.S. employment, the individualized work arrangements that it embraces make up a much larger, and growing, percent of the labor force.[27] For the 70 percent of Americans ages 18 to 24 who experience an average change of over 30 percent in their monthly incomes,

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[23] Edward Chen, *O'Connor v. Uber Technologies, Inc. et al., C13-3826 EMC,* U.S. District Court, Norther District of California, December 22, 2015.
[24] *Class Action Settlement Agreement and Release Case No. 3:13-cv-04065-VC*, January 27, 2016.
[25] Jonathan V. Hall and Alan B. Krueger*, An Analysis of the Labor Market for Uber's Driver-Partners in the United States,* Uber, January 22, 2015.
[26] *Paychecks, Paydays, and the Online Platform Economy*, JPMorgan Chase & Co., February 2016.
[27] Will Rinehart and Ben Gitis, *Independent Contractors and the Emerging Gig Economy*, American Action Forum, July 29, 2015.

the opportunity to smooth out earnings to meet rent, pay down student loans, or fund a new business venture is a benefit of the sharing economy that must be protected.[28]

The Labor Department has muddled the once-clear distinction between employees and independent contractors. This move creates uncertainty and costly legal battles for businesses and workers. Moving these workers into an employer-employee relationship from their current—but threatened—independent contractor status would substantially hinder the growth of sharing economy, not to mention the work opportunities and consumer benefits that it provides.

The sharing economy's growth has been propelled by the massive decrease in transaction costs that came from technological progress. Companies such as Uber and Airbnb offer the technical platform and support to allow transactions between buyers and sellers or service providers to easily take place. For this reason, these types of companies are often referred to as "intermediaries."[29]

Unlike employees, independent contractors are not entitled to minimum wage, overtime pay, unemployment insurance, or workers' compensation. But extending these employment protections to independent contractors makes no sense.

Since intermediaries do not control workers' hours, and determining how much someone is actually working solely for the intermediary is difficult (if not impossible), minimum wage and overtime pay requirements are inapplicable to the companies' workers. Additionally, one of the benefits of the sharing economy is that supply can easily fluctuate to meet ever-changing demand.

Because of the option of flexibility, independent contractor work for intermediaries is often transient, or done in addition to other work, so there is little reason to compel employers to fund unemployment insurance benefits. Intermediaries' workers also usually complete jobs off-site and use their own materials. For these reasons, workers' compensation systems should remain optional—not mandatory—for intermediaries.

When debating the future of worker classification, lawmakers should also resist calls to amend federal antitrust laws to allow independent contractors to collectively bargain. Collective bargaining is currently reserved for employees, who are able to unionize if a majority of an identified group of employees wants to be represented by a union.

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[28] *Paychecks, Paydays, and the Online Platform Economy*, JPMorgan Chase & Co., February 2016.
[29] Seth Harris and Alan Krueger, *A proposal for modernizing labor laws for 21st century work: The "independent worker"*, The Hamilton Project, December 2015.

Successful collective bargaining efforts would likely take away many benefits of the flexible, entrepreneurial work arrangements that independent contractors enjoy. Independent contractors are allowed to unionize, but under federal labor law they cannot collectively bargain (though the Seattle City Council recently voted to extend collective bargaining to ridesharing and taxi drivers).[30]

This makes sense because independent contractors are all their own businesses. The reason antitrust law would have to be amended is that collective bargaining by independent businesses violates federal prohibitions against price fixing.

Why should independent contractors who do not want union representation be forced to follow and fund labor agreements that they do not support? Of course these workers should be allowed to join a union, as they are now, but it makes little sense to force them to adhere to collectively bargained agreements when they often work with more than one company and/or have another full-time job. Additionally, these workers have diverse priorities and work arrangements, even when they work with the same intermediary.

For example, working with Uber supplies the only source of income for 20 percent of Uber drivers.[31] But Uber earnings provide supplemental, non-significant income for 48 percent of drivers. Only about 5 percent of Uber drivers work with the company for over 50 hours in an average a week, whereas half of Uber drivers work for fewer than 10 hours.[32]

Those who use Uber for supplemental income and part-time work have vastly different concerns than those who use the service for full-time employment. If collective bargaining is allowed, which group's interests will the union represent? Majority rule could take away one of the cornerstones of the sharing economy—the diverse benefits that flexible work opportunities provide.

Many independent contractors who partner with intermediaries would prefer to have access to some portable benefits. Portable pensions already exist in the form of Individual Retirement Accounts and Simplified Employee Pension Plans. Portable

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[30] Nick Wingfield and Mike Isaac, *Seattle Will Allow Uber and Lyft Drivers to Form Unions,* New York Times, December 14, 2015.
[31] *Uber Driver Roadmap 2*.0, Benenson Strategy Group, November 14, 2015.
[32] Jonathan Hall and Alan Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States,* January 22, 2015.

health insurance, although expensive, exists through the Affordable Care Act. Social Security provides disability insurance.

Even with the existing options, the option to offer other portable benefits without being determined to be an employer is something that many sharing economy firms are interested in.[33] This ability would help firms attract and keep the best talent. Intermediaries could benefit from pooling their independent contractors to secure better rates for benefits such as auto, health, and disability insurance and savings and retirement programs. Unfortunately, intermediaries that offer such benefits are in danger of being classified as employers. A legal carve-out should be created to allow intermediaries to offer these benefits and still retain their non-employer status.

Regulatory overreach is not confined to the Department of Labor Wage and Hour Division's recent administrator's interpretation that downplays companies' lack of control over workers' hours and tasks as a factor in deciding employment cases. The National Labor Relations Board has, through a series of decisions, also made it more difficult to work as an independent contractor.[34]

Though both agencies are part of the Department of Labor and are actively working to stack the deck against independent contractors, their definitions of employment differ. The Internal Revenue Service and Treasury Department also use different measures to determine the status of work relationships. This ambiguity again shows the need for a single legislative action over increased, conflicting regulations.

The Labor Department and the National Labor Relations Board are trying to change the previously-clear distinction between employees and independent contractors. This, combined with the changing nature of work, leaves judges with the impossible task of dealing with these two agencies' guidelines as lawsuits work their way through the courts. The uncertainty the status quo creates harms many companies and their workers, both inside and outside the sharing economy.

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[33] *Common Ground for Independent Workers,* Medium, November 10, 2015.

[34] Chairman Pearce, Member Hirozawa, and Member McFerran, *Sisters' Camelot and Christopher Allison and IWW Sisters' Camelot Canvassers Union,* National Labor Relations Board, September 25, 2015;
Chairman Pearce, Member Hirozawa, Member Johnson, and Member Schiffer, *FedEx Home Delivery, an Operating Division of FedEx Ground Package Systems, Inc. and International Brotherhood of Teamsters, Local Union No. 671*, National Labor Relations Board, September 30, 2015.

The worker classification question needs to be sorted out by federal legislators, not courts or unaccountable executive agencies.[35] The alternative is the crippling of the sharing economy by executive agencies set on incorrectly classifying the vast majority of new economy workers as employees.

The sharing economy's growth is a bright spot in today's tepid economy. Workers value the freedom and flexibility that partnerships with sharing-economy companies provide. In order to promote an entrepreneurial workforce, Congress needs to use its powers to rein in the Labor Department and National Labor Relations Board.

Options for Reform

The House Judiciary Committee deserves credit for establishing a task force on executive overreach, as there are many ways that Congress can regain control over federal agencies and restore lost economic opportunity to millennials.[36] Though numerous regulatory reform proposals have already been introduced or received a vote, opponents have stopped the bills from becoming law.

Despite the claims of critics, the need for additional Congressional oversight and review is real. President Obama, though he campaigned on a promise to create a more efficient and transparent government, has failed to follow-through on this promise when it comes to the regulations that his executive agencies promulgate.

Regulatory Predictability for Business Growth Act

President Obama's regulatory reform efforts though executive orders sound impressive, but they have not been effective. His January 2011 executive order "Improving Regulation and Regulatory Review" states that, "Regulations shall be adopted through a process that involves public participation... [Each agency] shall endeavor to provide the public with an opportunity to participate in the regulatory process."[37] Even with this executive order, the public is still unable to participate in one of the major ways that agencies create new regulations—interpretive rules.

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[35] Ian Adams, *The Flexible Future of Work,* R Street Institute, November 10, 2015.
[36] *Resolution Establishing the House Committee on the Judiciary Executive Overreach Task Force of 2016*, House Judiciary Committee, February 3, 2016.
[37] *Executive Order 13563 – Improving Regulation and Regulatory Review,* Federal Register, January 21, 2011.

Interpretive rules are supposed to clarify or explain existing definitions or terms. This is why they are not subject to the Administrative Procedures Act, which gives certain requirements for proposed administrative rules involving public access and comment.

Problems arise because much of today's rulemaking does not have to go through public review. It is acceptable to use interpretations or memorandum to provide guidance on and clarification of existing regulation, but agencies currently use these tools to change regulations in ways that the public and Congress should have a greater say over. Regulatory actions that take place outside of the formal rule-making channels should not expand the scope of any law.

The Regulatory Predictability for Business Growth Act, introduced by Representative Steve Daines on June 3, 2015 with two co-sponsors, would amend the Administrative Procedure Act to allow for rules deemed "longstanding interpretative" (in effect for at least one year) to be subject to the general notice of proposed rulemaking, comment, and publication provisions the law.[38] When interpretive rules and guidance documents hold as much weight as they do today, as is shown by the Labor Department's blog post on independent contractors, it is important for pronouncements that alter previous rules to undergo public notice and comments.

Regulatory Accountability Act

Another executive order from President Obama includes a section on the importance of cost and benefit analyses.[39] Executive Order 13579 states, "Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative)."

The Regulatory Accountability Act, introduced by Representative Bob Goodlatte on January 16, 2015 with 21 co-sponsors, would give the public a greater role in the regulatory process and establish stronger reviews of claimed costs.[40] This would require agencies to adopt the least costly available method when implementing laws to produce

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[38] Sen. Steve Daines, *S. 1487 – Regulatory Predictability for Business Growth Act of 2015*, 114th Congress, June 3, 2015.
[39] Office of the Press Secretary, *Executive Order 13579 – Regulation and Independent Regulatory Agencies*, The White House, July 11, 2011.
[40] Rep. Bob Goodlatte, *H.R.185 – Regulatory Accountability Act of 2015*, 114th Congress, July 1, 2015.

a public benefit. The Act was passed by the House on January 16, 2015, and a companion bill was introduced by Senator Rob Portman and seven co-sponsors on August 6, 2015.[41]

Agencies would have to regulate in a way that is more open and transparent, since the Regulatory Accountability Act requires Information Quality Act compliance, the option for public comments, and on-the-record hearings for costly regulations. This transparency would ensure that agencies make decisions based on evidence, a goal that President Obama supports.

These requirements are not too much to ask for when it comes to regulations that inflict over $100 million in annual costs, as determined by the Administrator of the Office of Information and Regulatory Affairs. Agencies should not be free to do what they wish when their pronouncements place additional regulatory burdens on Americans.

The Congressional Review Act

The Congressional Review Act of 1996 was originally passed to give Congress a greater role in containing regulatory growth. The act, signed into law by President Clinton, provided Americans with another form of recourse against agencies that ignored Congressional intent.

However, the Congressional Review Act has not been an effective deterrent against excessive regulation. It was only successfully used once in 2001 to stop an Occupational Safety and Health Administration rule on workplace ergonomics.[42] Even though starting the review process is relatively easy, during the 113th Congress only two Congressional Review Act resolutions were introduced in the House and none were introduced in the Senate. This means the Congressional Review Act was used on less than .03 percent of all the 7,000 or so rules issued over that time.[43]

The 114th Congress did use the Congressional Review Act in an attempt to invalidate a NLRB rule that sped up union elections.[44] However, this joint resolution was vetoed by

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[41] Sen. Rob Portman, *S.2006 – Regulatory Accountability Act of 2015,* 114th Congress, August 6, 2015.

[42] *Public Law 107-5*, U.S. Government Publishing Office, March 20, 2001.

[43] Kevin Kosar, *Three Steps for Reasserting Congress in Regulatory Policy*, R Street Institute, March 2015.

[44] Sen. Lamar Alexander, *A Joint Resolution Providing for Congressional Disapproval under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the National Labor Relations Board Relating to Representation Case Procedures*, 114th Congress, February 9, 2015.

President Obama.[45] Even though the regulation was allowed to stand, the additional scrutiny provided by Congressional review is a welcome development that should occur more often.

Since the Congressional Review Act is not working in practice, further steps need to be taken to make regulatory accountability easier to achieve.

Regulations From the Executive In Need of Scrutiny Act

When it comes to economically-significant regulations, the Regulations From the Executive In Need of Scrutiny (REINS) Act, introduced on January 21, 2015 by Representative Todd Young and 171 co-sponsors, would ensure that Congress agrees with agencies' determinations that costly regulations are necessary.[46]

This type of legislation would help to alleviate the autopilot nature of federal regulation. Whereas Congress now has to explicitly vote down a regulation by using the Congressional Review Act, under the REINS Act Congress would have to voice approval within 70 days if a major regulation is to take effect. The act does include temporary exemptions for regulations that address a pressing national security or public safety need.

The threshold for the REINS Act's provisions to take effect is regulations that have over $100 million in annual economic costs. Because agencies have incentives to overstate the benefits of regulations and understate their costs, it is important to not change the standard to regulations that have a net cost on the economy, after accounting for the benefits claimed by the agencies, of over $100 million.

The REINS Act passed the House on July, 28 2015, and the Senate version, introduced by Senator Rand Paul on January 21, 2015, has 36 co-sponsors.[47] While major regulations that are deemed necessary by Congress will still be able to be implemented, REINS-style legislation could help to stop the uninterrupted growth in federal regulation. However, it would do nothing to address today's levels of regulatory accumulation.

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[45] Office of the Press Secretary, *Memorandum of Disapproval Regarding S.J Res. 8*, The White House, March 31, 2015.
[46] Rep. Todd Young, *Regulations from the Executive in Need of Scrutiny Act of 2015*, 114th Congress, January 21, 2015.
[47] Sen. Rand Paul, *Regulations from the Executive in Need of Scrutiny Act of 2015,* 114th Congress, January 21, 2015.

Regulations Endanger Democracy Act

Another section of President Obama's "Improving Regulation and Regulatory Review" executive order stated, "Agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible."

On this point, the Regulations Endanger Democracy (RED Tape) Act, introduced by Senator Dan Sullivan on August 5, 2015 with 22 co-sponsors, would help pare back outdated regulations.[48] The RED Tape Act would require agencies to eliminate at least one rule of equal or greater financial and administrative cost before issuing a new regulation or modifying an existing regulation.

There are international precedents for this bill. Canada has a one-for-one rule, meaning each new or amended regulation that increases the administrative burden on businesses must lead to an equal offset in other administrative burdens. Additionally, each new regulation must lead to an older regulation being removed.[49]

Across the Atlantic, the United Kingdom's recent Cutting Red Tape program has successfully eliminated over 2,400 regulations.[50] There are 18 other European countries that have joined the UK in calling for the European Union to cut unnecessary and outdated regulations.[51]

Even though all of the current RED Tape Act cosponsors are Senate Republicans, the international regulatory reform efforts received support from across the political spectrum. Cutting back regulations to promote opportunity for young Americans should not be a partisan fight.

Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act

To achieve its goal of reducing overall regulatory costs by 15 percent, the SCRUB Act, introduced by Representative Jason Smith on February 27, 2015 with 9 co-sponsors, would establish a bipartisan, presidentially appointed Retrospective Regulatory Review

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[48] Sen. Dan Sullivan, *S. 1944 RED Tape Act of 2015*, 114th Congress, August 5, 2015.
[49] *One-for-One Rule*, Government of Canada, September 9, 2015.
[50] *Cutting Red Tape*, Her Majesty's Government, November 27, 2016.
[51] *UK and 18 other EU countries call for business red tape reduction*, Department of Business, Innovation & Skills, November 27, 2016.

Commission to focus on major rules that are over 15 years old. The Commission would exist for five and a half years. During that time, it would evaluate whether old rules achieved their purposes, if the benefits of rules are outweighed by their costs, and if regulations are redundant, among other priorities.

The SCRUB Act also contains a version of the rule in, rule out requirement of the RED Tape Act, and it passed a House vote on January 7, 2016.[52] Retrospective review, another goal of the Obama Administration, would also be required to be performed within ten years for new regulations under the SCRUB Act.

Americans Need Congressional Action, Not Executive Orders

It is common for presidents to talk about implementing regulatory reform. But as the unbroken year-over-year growth in regulation has shown, this talk has done little to stop or even slow regulatory accumulation.

President Obama has repeatedly called for regulatory reform. Based on his rhetoric, it is surprising that he is opposed to all of the proposed bills listed above that have passed the House or Senate.[53]

Part of the reason for President Obama's ineffectiveness in reforming America's regulatory process is the inherent incentives that agencies have towards expanding their reach. Internal regulatory reviews have not led to meaningful reform, but how could they have? The hands-off approach that Congress has given agencies provides no incentives for self-control.

This is why Congress needs to continue its fight to take control back from agencies by passing meaningful legislation that will bring accountability to America's regulatory process. Millennials need a stronger voice in the regulation process, and their elected representatives can provide that check.

The continued growth in the cost and number of regulations must be slowed, outdated regulations need to be repealed, and the public should have a greater say in agencies'

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[52] Rep. Jason Smith, *H.R. 1155 – SCRUB Act of 2016,* 114th Congress, February 27, 2015.
[53] Office of Management and Budget, *Statement of Administration Policy*, *H.R. 1155- Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2015*, Executive Office of the President, January 5, 2016;
Office of Management and Budget, *Statement of Administration Policy H.R. 185 – Regulatory Accountability Act of 2015*, Executive Office of the President, January 12, 2015; and,
Office of Management and Budget, *Statement of Administration Policy H.R. 10 – Regulations from the Executive in Need of Scrutiny Act of 2011*, Executive Office of the President, December 6, 2011.

actions. Enacting the strongest parts of the regulatory reforms listed above would accomplish all of these goals.

Conclusion

Millennials desire to be entrepreneurs, but government regulation hinders the realization of their entrepreneurial dreams. The need for continually-increasing levels of regulation also fails to reflect the realities of a 21st century, consumer-centered economy.

Moving forward with regulatory reform, America's elected representatives need to reassert their rightful authority over executive and independent agencies. If nothing is done, agencies will continue to impose unnecessary roadblocks to achieving the millennial American Dream. Thankfully, many members of Congress realize this and have put forward promising proposals to follow.

Millennials value transparency, democracy, and accountability. It is long past time for Congress to apply these principles to U.S. regulation.