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Before the
Subcommittee on Government Operations
Subcommittee on Healthcare, Benefits, and Administrative Rules
Committee on Oversight and Government Reform
October 24, 2017

Subcommittee Chairman Meadows, Subcommittee Chairman Jordan, and Members of the Subcommittees, thank you for the opportunity to address you today. My name is Diane Katz, and I am a Senior Research Fellow in Regulatory Policy at The Heritage Foundation. The views I express in this testimony are my own, and do not represent any official position of The Heritage Foundation.

At noon on January 20, 2017, federal regulatory policy dramatically shifted from the unparalleled expansion of the Obama Administration to a reform agenda under President Donald Trump. During the Obama years, the nation's regulatory burden increased by more than $122 billion annually as a result of 284 new "major" rules (roughly defined as those costing the private sector at least $100 million per year). The Trump Administration, in contrast, has launched a multifaceted reform agenda that has, to date, slowed rulemaking considerably and forced agencies to offset the regulatory costs imposed on the public. The extent to which the Administration ultimately succeeds in reining in decades of excess remains to be seen.

The need for reform has never been greater. Regulation acts as a stealth tax on the American people and the U.S. economy, and exacts an incalculable toll on individual liberty. The Heritage Foundation's 2017 Index of Economic Freedom—an annual global study that compares countries' entrepreneurial environments—highlights the urgent need for the U.S. to change course. For the ninth time in the past 10 years, America lost ground compared to other countries. And in the Business Freedom component of the index, which measures the regulatory burden, the U.S. registered its lowest score ever.[1]

The benefits of deregulation are numerous and well-documented. In a recent literature review on "The Growth Potential of Deregulation," the Council of Economic Advisors cited 2016 research that found excessive regulation cost the U.S. an average of 0.8 percent of GDP growth per year since 1980.[2] According to the Council, "Deregulation can unleash the greater potential of the U.S. economy, spurring the innovation and economic growth necessary to keep the United States prosperous, and to empower its citizens with greater opportunities."

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[1]Terry Miller and Anthony B. Kim, 2017 Index of Economic Freedom, The Heritage Foundation, http://www.heritage.org/index/pdf/2017/book/index_2017.pdf

[2]The Council of Economic Advisors, The Growth Potential of Deregulation, October 2, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/The%20Growth%20Potential%20of%20Deregulation_1.pdf

Obama's Red Tape

During its eight years in power, the Obama Administration imposed more than 23,000 regulations, including 693 major rules, of which 258 imposed a cumulative total of $122 billion in new annual costs on the private sector.

That was nearly double the $68 billion in private-sector costs imposed under the Administration of President George W. Bush.[3]

Some 40 percent of all major rules issued by the Obama Administration in its final year (21 out of 54 rules) were finalized after the election on November 8, 2016. These "midnight" regulations included some of the costliest rules of the final year.

This rush of rulemaking at the end of a term has been common among both Democratic and Republican Administrations, and regardless of the incoming president's party affiliation. In 2008, for example, George W. Bush imposed 36 new major rules, far above his average of about 20 major rules annually. A large spike was also recorded in the final year of the George H. W. Bush Administration.

The practice is problematic because the administration officials who issue midnight regulations have virtually no accountability once the President's term ends; they face no consequences for the regulatory costs imposed on society.

Trump's First Six Months

On the day President Trump took office, his Administration inherited more than 1,900 regulations in the rulemaking pipeline—900 or so in the proposed stage, and 1,000 in the final stage.

Like his predecessors, President Trump moved quickly to direct his chief of staff to issue a memorandum to department heads directing them to freeze rulemaking until designated senior officials could review and approve the regulations.[4]

The memorandum also directed agency heads to withdraw regulations that had been sent to the Office of the Federal Register but had not yet been published, and to postpone for 60 days the regulations that had been published in the Federal Register but had not yet taken effect.

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[3]Cost figures are based on assessments prepared by the rulemaking agency, typically from regulatory impact analyses. In calculating the Bush Administration rules, OMB estimates were used when available. If an agency did not prepare an analysis or did not quantify costs, an amount was not included, although the rule was counted in our tally of major regulations. The agencies' totals were adjusted to constant 2015 dollars using the gross domestic product deflator at Areppim, "Converter of Current to Real US Dollars," http://stats.areppim.com/calc/calc_usdlrxdeflator.php (accessed between March and June in 2017). Where applicable, a 7 percent discount rate was used. When a range of values was given by an agency, costs were based on the most likely scenario if so indicated by the agency; otherwise, the mid-point value was used. The date of a rule was based on its date of publication in the *Federal Register*.

[4]Reince Priebus, Memorandum for the Heads of Executive Departments and Agencies, January 20, 2017, https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies

The memorandum seems to have had its desired effect—there has been a dramatic decrease in the number of new rules adopted. From Inauguration Day through June 30, the Trump Administration finalized 659 new rules, of which eight were classified as major. Two of these increased regulatory burdens on the private sector, and two decreased those burdens. This is a startling change from Obama's first six months, during which 1,103 rules were finalized, of which 23 imposed major costs on the private sector. The George W. Bush Administration adopted 1,464 rules in its first six months, of which 25 imposed major costs on the private sector.

Both of the Trump rules that increased regulatory burdens were initiated by the Obama Administration and promulgated by agencies independent of direct White House control. The Securities and Exchange Commission adopted a rule shortening the settlement cycle for broker-dealer transactions (for which costs were not quantified), while the Federal Reserve Board imposed loss-absorption mandates on large banks (with private-sector costs estimated at $1.3 billion).

Of the two rules implemented by the Trump Administration that reduce regulation, one from the Food and Drug Administration postponed the effective date for new nutrition label requirements, and the second, from the Department of Labor, postponed the effective date of its rule expanding the scope of fiduciary duties for investment advisors. By extending the effective dates of these 2016 rules, the regulatory costs have been reduced, although the savings are one-time gains. In neither case have the underlying mandates been eased (although efforts to accomplish this are continuing).

In the same six-month period, the Trump Administration's Office of Information and Regulatory Affairs (OIRA) conducted significantly fewer reviews of new rules—and withdrew a higher proportion of rulemakings—than either the Obama Administration or the Bush Administration—the lowest number, in fact, since recordkeeping began in the 1990s.

In the latest survey of CNBC's Global CFO Council, 74 percent of the executives cited deregulation as the Trump administration's achievement that has had the most positive impact on their company.[5]

Executive Orders

The Trump White House issued 39 executive orders (EOs) in his first six months. Two, in particular, are intended to have a direct and substantial impact on the regulatory process.

EO 13771 directs executive departments and agencies to identify for repeal at least two existing regulations for every new regulation they promulgate.[6] The order also calls for a budgeting process to manage regulatory costs, and prohibited any increase in the total incremental cost of all regulations finalized in 2017 (unless required by law or advised by the Director of the Office

[5]The CNBC Global CFO Council represents public and private companies that collectively manage more than $4 trillion in market capitalization across a variety of sectors. See CNBC Global CFO Council Survey, September 2017, https://www.cnbc.com/2017/09/18/cfos-say-trump-deserves-credit-for-stock-market-highs.html

[6]Executive Office of the President, "Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs," *Federal Register*, Vol. 82 (January 30, 2017), p. 9339, https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs (accessed September 22, 2017).

of Management and Budget (OMB). Going forward, the EO directs the OMB director to set the amount of incremental costs an agency will be allowed to impose, if any.

The OMB's guidance for implementing EO 13771 limits its application to regulatory actions (rules and guidance documents) that are "economically significant."[7] However, offsets to regulatory costs may be derived from any deregulatory actions that will result in a net savings.

According to OIRA Administrator Neomi Rao, agencies have "more than met" the two-for-one requirement for FY 2017. OMB officials have said that agencies have issued four final rules that were offset by at least 10 deregulatory actions.

Executive Order 13777 Enforcing the Regulatory Reform Agenda

This executive order directs the head of each regulatory agency to 1) designate an agency official as the Regulatory Reform Officer responsible for overseeing implementation of regulatory reform initiatives and policies; and 2) form a Regulatory Reform Task Force to recommend regulatory reforms. The task forces were to report on their progress by the end of May. The schedule for future progress reports is to be set by agency administrators.

The Upsides of the EOs

The regulatory budgeting established in EO 13771 is intended to inject economic discipline and rationality into rulemaking. If agencies are compelled to restrict the costs imposed on the public, they must engage in a type of rolling retrospective review of the vast accumulation of rules that comprise more than 185,000 pages in the Code of Federal Regulation—up from some 138,000 in 2000.[8]

From the Carter Administration forward, agencies have been directed by the White House to conduct some form of regulatory look-back.[9] But absent a fixed numeric or budgetary target (as called for in this order), there has been little accountability and thus these past initiatives have largely failed to appreciably reduce regulatory costs.

The budgeting regime in EO 13771 (and its guidance) are also intended to motivate agencies to streamline existing regulations (to offset the cost of new rules). In so doing, agencies can reduce the compliance burden without sacrificing the regulatory purpose.

If properly set, the budget caps should also compel agencies to prioritize their rulemaking. Otherwise, they risk running short of the budgetary headroom necessary to issue a new rule. And

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[7]The term "economically significant" refers to rules that will lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, as ector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; create a serious inconsistency or interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues.

[8]George Washington University Regulatory Studies Center, Reg Stats, Pages in the Federal Register (1936-2016), https://regulatorystudies.columbian.gwu.edu/reg-stats#

[9]Joseph E. Aldy, Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy, November 17, 2014, https://www.acus.gov/sites/default/files/documents/Aldy%2520Retro%2520Review%2520Draft%252011-17-2014.pdf

because the OMB will determine the annual caps, agencies (presumably) will have to compete for the now limited resource of regulatory costs. Not all rulemakings are equally necessary or warranted, and the OMB—not just the individual agency—will distinguish between them. Although agencies are currently required to document that the benefits of a new regulation exceed the costs (through a benefit-cost analysis), there is no constraint on the amount of accumulated costs of regulation. Indeed, the government does not even track the cost of regulation on consumers and businesses, which reflects Washington's indifference.

The regulatory budget exercise, if properly conducted, will reflect the accuracy (or inaccuracy) of agencies' benefit-cost analyses. One can hope that over time, the retrospective reviews will help to improve regulatory estimates at the front end.

The two-for-one requirement puts some muscle behind retrospective review that was previously missing. If the procedural challenges can be overcome, this approach may prove useful in rationalizing regulatory activity, and incentivizing deregulation as well as regulation.

The advantage of EO 13777 is in fostering regulatory reform from within the agency. Also significant is the directive for agency heads to consider progress on reform in evaluating the performance of personnel.

Creation of the regulatory task force is intended to broaden the search for regulations that 1) eliminate jobs, or inhibit job creation; 2) are outdated, unnecessary, or ineffective; 3) impose costs that exceed benefits; 4) are insufficiently transparent to meet the standard for reproducibility; or 5) implement executive orders and other presidential directives. The EO directs agency heads to prioritize (to the extent permitted by law) regulations identified by the task force as "outdated, unnecessary, or ineffective."

Critics claims to the contrary, neither executive order allows agencies to circumvent their statutory obligations. If a statute prohibits consideration of cost in devising a regulatory action, EO 13771 does not override that stricture. However, the OMB guidance states that agencies will generally be required to offset costs even if costs are not considered in the promulgation of the rule.

EO Issues to Resolve

Well-intended as it is, EO 13771 presents some practical challenges that may affect its utility. To some extent, these relate to the erosion of regulatory accountability on the part of Congress and to the inordinate deference granted agencies by the courts. These problems require congressional action.

Agency calculations of regulatory costs are notoriously inaccurate and imprecise, which may skew the impact of reform efforts unless addressed. In particular, a range of political and fiscal incentives drive agencies to overstate benefits and understate costs.

The absence of accurate analyses represents both a major dysfunction in the rulemaking process and a potential pitfall for regulatory budgeting. How can an agency (or the public) judge the efficiency of a regulation if the costs of a rule are estimated to range, say, from $290 million to

$2.05 billion—as was the case with a rule setting margin requirements for uncleared swaps promulgated by the Commodity Futures Trading Commission?[10]

The vast majority of new rules issued each year do not undergo benefit-cost analysis, including many designated as "major" (defined as imposing costs on the private sector in excess of $100 million). According to a scorecard on the quality of agency regulatory analyses developed by the Mercatus Center, none of the 130 analyses examined received more than a 2.8 out of a possible 5, meaning each was incomplete in some meaningful way.[11] On what basis will these rules be quantified—either in their contribution to costs or for purposes of offsets?

Contrived analyses also present challenges for balancing regulatory costs. For example, the Obama Administration's Clean Power Plan was estimated to cost $6.6 billion annually—a figure widely contested as low by industry. But the benefits calculation used to justify the rule is even more dubious than the cost calculation: The only way the agency could show that the benefits of the rule exceed the costs was to count presumed benefits worldwide rather than just in the United States—an obviously invalid approach. Ascribing benefits to the entire globe is an attempt to shrink the relative costs to a more acceptable figure. But such trickery will wreak havoc in regulatory budgeting.

Also problematic is the exemption of independent agencies from EO 13771 and EO 13777, although they generate a great many onerous regulations—particularly following the 2010 passage of the Dodd-Frank Act. This is a major loophole in the both the rulemaking process and the Administration's regulatory reform directive. These agencies should be fully subject to the same requirements as executive branch agencies.

Another dilemma is the shifting of regulatory burdens among various sectors of the economy. For example, a new rule may impose hefty costs on, say, power plants, but the offsets in regulatory costs may not necessarily accrue to that sector. EO 13771 advises agencies to "prioritize" deregulatory actions that affect the same sector or geographic area, but there is no assurance that will happen.[12]

Regulatory budgeting emphasizes the cost of regulation, but both executive orders will succeed or fail to the extent the agencies set appropriate priorities and eliminate unwarranted rules. This is easier said than done because regulation is far more than policy. It is also a political spoils system by which various special interests impose their will on the public. Thus, powerful forces favor the status quo, and resist reform.

As it is, deregulation entails a complex and protracted administrative process, often involving the courts. Repealing a regulation requires following the rulemaking procedures under the

[10] Commodity Futures Trading Commission, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Final Rule, Federal Register, January 6, 2016, https://www.gpo.gov/fdsys/pkg/FR-2016-01-06/pdf/2015-32320.pdf

[11] Jerry Ellig, James Broughel, and Spencer Bell, Regulating Real Problems: The First Principle of Regulatory Impact Analysis, Mercatus Center, March 2016, http://mercatus.org/sites/default/files/Ellig-Regulating-Real-Problems-MOP-v1.pdf

[12] EO 13771 regulatory actions for which offsetting costs must be identified are "significant" rules. of entitlements, grants, user fees or loan programs; or raise novel legal or policy issues. Significance determination made by OIRA.

Administrative Procedures Act, including providing justification for the action and subjecting it to public notice and comment. A regulatory repeal can take years to accomplish.

"For agencies, deregulation is hard—something I've learned in the past three months," said Neomi Rao, administrator of the Office of Information and Regulatory Affairs, in remarks on October 4 at the Heritage Foundation.

Unified Agenda

The new Administration in July released its first Unified Agenda of Regulatory and Deregulatory Actions.[13] This document—typically published twice a year—outlines the rulemaking plans for each agency. Under President Obama, the Unified Agenda consistently included between 120 and 130 major rules,[14] reaching a high of 144 pending rules in the spring of 2016. In President Trump's agenda, the number was cut by about two-thirds, to 48, with agencies having withdrawn 469 rulemakings. The Administration also reconsidered 391 active rulemakings by reclassifying them as long-term (282) or inactive (109).

Scaling Back

As part of a broader effort to scale back the Obama Administration's vast web of global warming programs, President Trump on June 1 announced the U.S. withdrawal from the Paris climate agreement, which President Obama had signed as an executive agreement on April 22, 2016. The United States, under its Intended Nationally Determined Contributions, was committed to reduce greenhouse gas emissions in 2025 by 26 percent to 28 percent compared to 2005 levels.

The Trump Administration also revoked an Obama directive allowing transgender students in public schools and other government facilities to use the bathrooms and locker rooms as befit their gender identity. A two-page "Dear Colleague" letter announcing the revocation on February 22, 2017, stated that the Obama directive lacked legal justification.

On Oct 6, 2017 the Administration released two companion rules that provide exemptions for employers from the contraceptive mandate. The mandate issued by the Obama Administration required employers to offer health insurance coverage for all FDA-approved contraception, including medications and devices that may act as abortifacients as well sterilization procedures. Under the two companion rules published on October 13, 2017, entities that have sincerely held religious beliefs or moral convictions against providing such services would no longer be required to do so.

The Administration has also initiated a variety of other rule delays and reconsiderations, including:

<u>Clean Power Plan</u>

EPA Administrator Scott Pruitt on October 10, 2017 issued a Notice of Proposed Rulemaking to repeal the Obama Administration's Clean Power Plan. The rule dictates state-specific restrictions on GHG emissions, with a target reduction of 30 percent below 2005 levels by 2030. Under the

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[13]Reginfo.gov, "Unified Agenda of Regulatory and Deregulatory Actions," https://www.reginfo.gov/public/do/eAgendaMain (accessed September 22, 2017).

[14]Including only major rules at the proposal, or final, stages.

Presidential Executive Order on Promoting Energy Independence and Economic Growth, issued March 28, 2017, the EPA was directed to consider rescinding the rule. Following its review, the EPA has proposed to determine that the regulation exceeds the agency's statutory authority.

Waters of the United States

Also facing repeal is the EPA's 2015 rule on the "waters of the United States" (issued jointly with the U.S. Army Corps of Engineers). The rule created a new definition for the waters that the federal government can regulate under the Clean Water Act. The new definition tramples property rights and overrides the important role that states play in water stewardship. Property owners are losing their ability to derive value from their land, restricting investment and diminishing property values, and curtailing property tax revenues. Farmers, too, are deeply concerned that their land-use practices will be restricted, thereby reducing their productivity—and income.

Sue and Settle

EPA Administrator Scott Pruitt on October 16, 2017 issued a directive to end agency cooperation with the practice of "sue and settle." Regulators have often worked in concert with advocacy groups to produce settlements to lawsuits that result in more stringent regulation. Such collaboration has become a common way for agencies to impose rules that otherwise would not have made it through the regulatory review process. The sue and settle practice at its core is regulation through litigation.

Dodd-Frank

The U.S. Department of the Treasury has released two of the four reports detailing reforms to the regulation of the financial sector. The action follows the Presidential Executive Order on Core Principles for Regulating the United States Financial System, issued February 3, 2017. The report concludes that the hundreds of regulations imposed in the wake of the 2008 financial crisis impeded economic recovery, and states: "In the wake of the financial crisis, the U.S. economy has experienced the slowest economic recovery of the post-war period." One key area of reform will be promoting capital formation for entrepreneurs and businesses.

Energy

The Bureau of Land Management (BLM) proposed on October 5, 2017 to suspend or delay requirements of the "flaring and venting rule" until January 17, 2019. According to the agency, the BLM is reviewing the 2016 rule and "wants to avoid imposing temporary or permanent compliance costs on operators for requirements that may be rescinded or significantly revised in the near future."[15]

Network Neutrality

The 2015 network neutrality rule, formally titled the Open Internet Order, reclassified "Internet access" as a common carrier service under the Communications Act of 1934. This seemingly technical change subjects Internet service providers to comprehensive regulation by the Federal Communications Commission. It also requires service providers to treat all bits of content

[15] Department of Interior, Bureau of Land Management, Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, Federal Register, October 5, 2017, https://www.gpo.gov/fdsys/pkg/FR-2017-10-05/pdf/2017-21294.pdf

travelling over their networks in equal fashion. FCC Chairman Ajit Pai is moving to revoke the order.

Overtime Rule

On June 30, 2017, the U.S. Department of Labor told the U.S. Court of Appeals for the Fifth Circuit that it intends to abandon the Obama overtime rule, but pursue a new, more reasonable regulation. As issued, the rule eliminates the "white collar" exemptions from minimum-wage and overtime-pay requirements under the Fair Labor Standards Act.

Nutrition Labels

On May 4, 2017, the Food and Drug Administration (FDA) announced that it is pushing back the compliance deadline for its rule on Nutrition Labeling of Standard Menu Items[16] from May 5, 2017, to May 7, 2018 (following two previous delays). Similarly, on June 13, 2017, the FDA announced its intention to extend the compliance date for the Nutrition Facts Label rule.[17] According to the FDA, "The framework for the extension will be guided by the desire to give industry more time and decrease costs, balanced with the importance of minimizing the transition period during which consumers will see both the old and the new versions of the label in the marketplace."[18]

Congressional Review Act

A total of 14 rules have been "disapproved" under provisions of the Congressional Review Act (CRA)—a 1996 statute that provides for fast-track review of regulations. If passed by Congress and signed by the President, a resolution of disapproval rescinds a regulation and prohibits a future rule that is "substantially the same." A 15th resolution—to block a CFPB rule restricting arbitration agreements—is pending. Since it was enacted in 1996, the CRA had been successfully used only once, in March 2001. But this year, it became one of the primary tools available to block last-minute Obama rules from taking effect.

Conclusion

The burden of federal regulation has grown without constraint for decades—with $122 billion in new annual costs added in the Obama years alone. President Trump has pledged to "massively" reduce regulation, and he has so far significantly slowed regulatory output. The administration is also reconsidering several of the Obama Administration's most egregious regulations. Two of his directives, in particular, hold promise for incremental change if procedural challenges can be overcome. But there are a number of necessary systemic reforms that require action by Congress.

[16] Food and Drug Administration, "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments," *Federal Register* Vol. 82, No. 85 (May 4, 2017), p. 20825, https://www.gpo.gov/fdsys/pkg/FR-2017-05-04/pdf/2017-09029.pdf (accessed September 25, 2017).

[17] Food and Drug Administration, "Changes to the Nutrition Facts Label," https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates (accessed September 22, 2017).

[18] Food and Drug Administration, "Changes to the Nutrition Facts Label: Compliance Date," https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates (accessed September 22, 2017).

Recommendations for Reform

1. Require congressional approval of new major regulations issued by agencies. Congress, not regulators, should make the laws and be accountable to the American people for the results. No major regulation should be allowed to take effect unless and until Congress explicitly approves it. In addition, legislators should include requirements for congressional approval of rules in every bill that expands or re-authorizes regulation. Such an approach would demonstrate how REINS Act requirements work in practice, paving the way for their broader application.

2. Create a congressional regulatory analysis capability. In order to exercise regulatory oversight, especially if the REINS Act is adopted, Congress needs to be able to analyze various regulatory policies objectively. Congress currently depends on the White House's OIRA, or the regulatory agencies themselves, for analyses, and needs an independent source of expertise. This could be accomplished through an existing congressional institution, such as the Congressional Budget Office or the Government Accountability Office, or through a new unit established by Congress. This new capability need not require a net increase in staff or budget, but could easily be paid for through reductions in existing regulatory agency expenses.

3. Automatically sunset obsolete regulations. While the REINS Act would strengthen review of new regulations, measures for reviewing existing red tape are also necessary. Congress should set sunset dates for all major regulations. Rules should expire automatically if not explicitly reaffirmed by the relevant agency through the formal rulemaking process. As with any such regulatory decision, this reaffirmation would be subject to review by the courts. Such sunset clauses already exist for some regulations. Congress should make them the rule, not the exception.

4. Codify regulatory impact analysis requirements. All executive branch agencies are currently required to conduct regulatory impact analysis (including cost-benefit calculations) when proposing any major new rules. Codifying these requirements would ensure that they cannot be rolled back without congressional action and provide the basis for judicial review of agency compliance.

5. Subject independent agencies to executive branch regulatory review. Rulemaking is increasingly being conducted by independent agencies outside the direct control of the White House. Regulations issued by agencies such as the FCC, the SEC, and the CFPB are not subject to review by OIRA or even required to undergo a cost-benefit analysis. This is a gaping loophole in the rulemaking process. These agencies should be fully subject to the same regulatory review requirements as executive branch agencies.

6. Increase professional staff levels within OIRA. OIRA is one of the only government entities in Washington that is charged with limiting, rather than producing, red tape. More resources should be focused on OIRA's regulatory review function. This should be done at no additional cost to taxpayers: The necessary funding should come from cuts in the budgets of regulatory agencies.

Appendix A
Other EOs and Memoranda Related to Regulation

Presidential Memorandum on Fiduciary Duty Rule. This directs the Secretary of Labor to examine the Fiduciary Duty Rule[19] to determine, through legal and economic analysis, whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. If an affirmative determination is made, the EO directs the Secretary of Labor to publish for notice and comment a proposed rule rescinding or revising the Fiduciary Duty Rule.

Presidential Executive Order on Promoting Energy Independence and Economic Growth. The order directs agencies responsible for regulating domestic energy production to propose revisions or rescissions of regulatory barriers that impede U.S. energy independence. It also rescinds several Obama EOs and policies related to climate change, and directs reconsideration of the $7.2 billion Clean Power Plan. And, it directs the Administrator of the EPA and the Secretary of the Interior to review, and, if necessary, revise or rescind several regulations that place unnecessary, costly burdens on coal-fired electric utilities, coal miners, and oil and gas producers.

Presidential Memorandum Regarding Construction of the Dakota Access Pipeline. This directs relevant officials to expedite requests for approvals to construct and operate the Dakota Access Pipeline.

Presidential Memorandum Regarding Construction of the Keystone XL Pipeline. This invites TransCanada to re-submit its application to the Department of State for a presidential permit for the construction and operation of the Keystone XL Pipeline, and directs the Secretary of State to expedite review.

Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal. This directs the Secretary of Health and Human Services and the heads of all other relevant departments and agencies to "waive, defer, grant exemptions from, or delay" Obamacare rules "that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications."

Presidential Executive Order on Core Principles for Regulating the United States Financial System. This directs the Secretary of the Treasury to identify all Treasury regulations that are an undue financial burden on taxpayers, add undue complexity, or exceed statutory authority. It also establishes Core Principles of financial regulation, including (1) empowering Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth; (2) preventing taxpayer-funded bailouts; (3) fostering economic growth and vibrant financial markets through more rigorous regulatory impact analysis that

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[19]Norbert Michel, "Feds Just Can't Allow People to Save and Invest," Heritage Foundation *Commentary*, November 4, 2015, http://www.heritage.org/government-regulation/commentary/feds-just-cant-allow-people-save-and-invest.

addresses systemic risk and market failures, such as moral hazard and information asymmetry; (4) enabling American companies to be competitive with foreign firms in domestic and foreign markets; (5) advancing American interests in international financial regulatory negotiations and meetings; (6) making regulation efficient, effective, and appropriately tailored; and (7) restoring public accountability within federal financial regulatory agencies and rationalizing the federal financial regulatory framework.

Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the OMB Director to propose a plan to reorganize governmental functions and eliminate unnecessary agencies.

Presidential Executive Order on Identifying and Reducing Tax Regulatory Burdens. This directs the Secretary of the Treasury to review all "significant" tax regulations issued by the department on or after January 1, 2016, and, in consultation with the Administrator of OIRA within the OMB, identify regulations that impose an undue financial burden on taxpayers; add undue complexity to the tax laws; or exceed the statutory authority of the Internal Revenue Service. The Secretary is also directed to delay the effective date of such regulations, if possible, and to modify or rescind such regulations through notice and comment rulemaking.