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Deregulation

Summary and Key Talking Points

Policy Proposals

1. Require congressional approval of new major regulations issued by agencies.
2. Congress should set sunset dates for all major regulations.
3. Subject independent agencies to executive branch regulatory review.
4. Require regulatory standards to be based on factual data, and ensure that public access to all such data be provided.

Quick Facts

1. Private sector regulatory costs increased by $122 billion annually during the Obama Administration.
2. Based on fiscal year 2017 budget figures, administering red tape will cost taxpayers nearly $70 billion, an increase of 97 percent since 2000.
3. Excessive regulation stunted average GDP growth by 0.8 percent annually since 1980.
4. Total regulatory costs are commonly estimated to exceed $2 trillion annually from an estimated 3,500 regulations imposed each year.

Power Phrases

A Focus on Savings

- A typical American household could save thousands of dollars each year on everything from housing and gas to food and clothes with better regulation.

Cost of Regulation

- Not all regulations are unwarranted, but volumes of outdated and unscientific regulations cost hundreds of billions of dollars per year, hitting low-income families and fixed-income seniors the hardest.

Congressional Approval

- It is time for a serious national discussion about the federal government's extensive role in regulating activities that can be overseen more effectively by those closer to the activity.
- No regulation should be adopted if the American people and their representatives in Congress do not agree that it is legally authorized, necessary, and properly designed.

The Issue

Thousands of federal regulations have been eased as a result of the COVID-19 crisis to speed production of protective gear and development of treatment tools. This deregulatory sweep represents explicit acknowledgement that unnecessary regulation undermines public health and well-being. Economic recovery post-COVID-19 likewise requires Congress and the White House to lighten the regulatory burden on employers and investors.

President Donald Trump's executive order of May 19, 2020, directs federal agencies to exercise regulatory restraint. But it will require action by Congress as well to ensure that meaningful reform outlasts the current Administration. Conventional wisdom has long held that government regulation is the only way to protect the public interest. We now know better: Forty years of command-and-control regulatory schemes have led to massive, ineffective, and unaccountable bureaucracies and a raft of costly unintended consequences.

Most regulatory intervention embodies the Progressive conceit that government knows what is best for us all. But even well-intentioned central planners cannot possibly possess the vast and ever-shifting knowledge necessary to determine the optimal course of action—especially when global markets are involved.

The self-interest of entrepreneurs and investors increases the likelihood of success. Consumers and competitors impose penalties for errors in judgment swiftly and stringently. In contrast, political imperatives trigger government action, which is largely insulated from consumer demand, competition, and financial discipline.

Government remedies are inherently weak because political concessions are necessary for them to gain acceptance. As economist Richard Stroup noted, "A political solution cannot be purchased—only rented." Regulatory schemes are also unreliable because neither Congress nor the White House is bound by the actions of its predecessors, except in the granting or sale of private rights.

Regulations also shift labor and capital away from productive activities, such as innovation and job creation, to compliance activities. The burden falls heaviest on new businesses, which inhibits job creation, undermines competition, and secures the dominance of incumbent firms. Unsupportable compliance costs also drive mergers, further consolidating markets.

Regulatory costs are not a problem just for business. Low-income families and fixed-income seniors are also hit hard by government edicts. The costs of compliance increase the prices of products and services across the economy, including soaring energy bills from renewable energy dictates, increased food bills from excessive production standards, restricted access to credit due to some 400 Dodd–Frank regulations, and higher medical costs as a result of the inaptly named Affordable Care Act—to name a few.

Conservatives rarely shape the debate on environmental policy, too often focusing on regulatory costs rather than on an alternative agenda. But green eyeshades cannot compete for public support against the seemingly selfless agenda of green activists. Americans care deeply about the environment and expect public officials to act. Conservatives must avoid merely opposing the green lobby's agenda and must put forth a platform for responsible stewardship. As noted in a previous Heritage report, *Protecting the Environment: A Free Market Strategy*, "While the conservative critique is well known, the conservative agenda is not."

Reform is hindered by the immensity, complexity, and lethargy of the federal regulatory apparatus. A simple repeal requires adherence to a ream of administrative procedures, such as analyzing alternatives and presenting justification for public notice and comment. Litigation is rampant and protracted.

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.

It is not enough to repeal individual rules or tweak the rulemaking process. A more substantive national debate must address the extent to which it is appropriate for the federal government (or any level of government) to intervene in matters that can be managed by the states and, in many instances, by the private sector, more effectively.

Recommendations

Permanently eliminate regulations that were waived as unnecessary during the COVID-19 crisis. There is no need to maintain red tape that interferes with the delivery of medical care and the health of the economy. The Administration and Congress should prioritize the repeal of rules deemed unnecessary in combating COVID-19.

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 reauthorizes regulation.

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.

Codify regulatory impact analysis requirements. All executive branch agencies are currently required to conduct regulatory impact analyses (including cost-benefit calculations) when proposing any new major 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.

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 Federal Communications Commission, the Security and Exchange Commission, and the Consumer Financial Protection Bureau are not subject to review by the Office of Information and Regulatory Affairs (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 those to which executive branch agencies are subject.

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.

Require agencies to base decisions on factual data, and to disclose any such data for public review. Federal agencies routinely mask politically driven regulations as scientifically based imperatives. The supposed science underlying these rules is often hidden from the public and unavailable for vetting by experts. Credible science and transparency are necessary elements of sound policy.

Facts and Figures

FACT: Total regulatory costs are commonly estimated to exceed $2 trillion annually (although there is no official tracking).

- There is no accurate accounting of the hundreds of departments, agencies, sub-agencies, and commissions from which an estimated 3,500 regulations materialize each year.

FACT: Private sector regulatory costs increased by an astonishing $122 billion annually during the Obama Administration, according to analyses by Heritage experts.

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

FACT: Regulatory costs have increased by 97 percent since the year 2000.

- Based on fiscal year 2017 budget figures, administering red tape will cost taxpayers nearly $70 billion, an increase of 97 percent since 2000.
- A big part of the increase is the growing legions of regulators—who now number an all-time high of 279,000.

FACT: The United States is currently ranked as only "Mostly Free" in The Heritage Foundation's Index of Economic Freedom.

- Francis Scott Key's characterization of America as the "land of the free" is no longer accurate. The United States ranked only "mostly free" in The Heritage Foundation's *2019 Index of Economic Freedom*, trailing Hong Kong, Singapore, New Zealand, Switzerland, Australia, Ireland, the United Kingdom, Canada, the United Arab Emirates, Taiwan, and Iceland.

FACT: Excessive regulation stunted average GDP growth by 0.8 percent annually since 1980, according to a 2017 report by the White House Council of Economic Advisors.

FACT: Five of the six richest counties in the United States ring Washington, D.C., which may demonstrate that the greater government interference grows, the more essential political influence becomes.

Additional Resources

Diane Katz, "A Regulatory Reform Agenda for the First 100 Days," Heritage Foundation *Issue Brief* No. 4652, February 1, 2017, https://www.heritage.org/sites/default/files/2017-02/IB4652.pdf.

Diane Katz, "Red Tape Receding: Trump and the High-Water Mark of Regulation," Heritage Foundation *Issue Brief* No. 3260, November 8, 2017, https://www.heritage.org/sites/default/files/2017-11/BG3260.pdf.

Nicholas D. Loris, "The Many Problems of the EPA's Clean Power Plan and Climate Regulations: A Primer," Heritage Foundation *Backgrounder* No. 3025, July 7, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG3025.pdf.

Robert Gordon and Diane Katz, "Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform," (Washington: The Heritage Foundation, 2015), http://thf_media.s3.amazonaws.com/2015/pdf/EnvironmentalPolicyGuide.pdf.

Daren Bakst and Patrick Tyrrell, "Trump Administration Should Address Federal Policies that Limit Opportunity and Hurt the Poor," Heritage Foundation *Backgrounder* No. 3228, June 30, 2017, https://www.heritage.org/sites/default/files/2017-06/BG3228.pdf.