

Toward a Federal “Regulatory Budget”

When Congress spends, no one questions that disclosure is necessary for voters to hold representatives accountable. Federal expenditure programs are funded by either raising taxes or borrowing against a promise to repay with interest from future tax collections. Taxpayers can readily observe those decisions during the authorization and appropriations processes (not that it is a simple thing to do). They can inspect the costs of programs and agencies in Congressional Budget Office (CBO) publications³⁴⁰ and the federal budget’s historical tables.³⁴¹ The point is, disclosure exists for spending, however extravagant it may be.

However, Congress often “funds” objectives and programs through regulatory mandates. Regulation and spending are related; both are mechanisms by which governments act or compel individuals. Rather than taxing and paying directly, federal regulation can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives (and that too, is regulation). Regulation in such instances functions as an

off-budget form of taxation and spending. Although disclosure of spending does not stop deficits and debt from growing, it is still vital for making progress toward those ends. Likewise, policy makers should disclose regulatory costs to the extent possible so that the choice to regulate can at least have an opportunity to get the full consideration it deserves.

Because the costs and economic effects of regulatory compliance are not budgeted and disclosed the way that federal spending is, regulatory initiatives can commandeer private sector resources with comparatively little public controversy. Policy makers may find it easier to impose regulatory costs than to embark on government spending because of the former’s lack of disclosure and accountability. And when regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule. Table 2 provides a 2020 overview of the federal regulatory enterprise to be discussed in the following pages.

Table 2. The Regulatory State: A 2020 Overview

	Year-End 2019	1-Year Change (2018–2019)	5-Year Change (2015–2019)	10-Year Change (2010–2019)
Total regulatory costs	\$1.9 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$72.0 billion	0.88%	9.4%	145%
<i>Federal Register</i> pages	70,938	14.0%	–11.6%	–12.9%
Devoted to final rules	20,986	15.4%	–15.0%	–15.8%
<i>Federal Register</i> final rules	2,964	–12.0%	–13.1%	–17.0%
Code of Federal Regulations pages	185,984	0.3%	4.3%	12.4%
Total rules in Agenda pipeline	3,752	6.2%	13.8%	–11.2%
Completed	546	13.8%	–1.4%	–24.4%
Active	2,602	8.5%	16.0%	–3.5%
Long term	604	–7.8%	21.0%	–252.0%
“Economically significant” rules in the year-end pipeline	192	10.3%	–11.9%	–14.3%
Completed	44	76.0%	–22.2%	–13.7%
Active	119	0.8%	–20.1%	–15.0%
Long term	29	–6.5%	–12.1%	–12.1%
Rules affecting small business	644	6.4%	–4.5%	–23.8%
Regulatory flexibility analysis required	347	5.2%	–10.1%	–18.9%
Regulatory flexibility analysis not required	297	8.0%	3.1%	–28.8%
Rules affecting state governments	386	18.0%	–5.6%	–29.4%
Rules affecting local governments	232	16.6%	–9.0%	–32.9%
GAO Congressional Review Act reports on major rules	74	34.5%	–3.9%	–26.0%

n/a = not applicable.